



# IOWA ADMINISTRATIVE BULLETIN

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Pages 143 to 254

## CONTENTS IN THIS ISSUE

Pages 151 to 254 include **ARC 8979B** to **ARC 8985B** and **ARC 8988B** to **ARC 9000B** and **ARC 9002B** to **ARC 9010B**

### ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]  
COMMERCE DEPARTMENT[181]"umbrella"

- Notice, Applicants for reinstatement—  
fees, 12.2(3) **ARC 8988B** ..... 151
- Filed, Continuing education, ch 10 **ARC 9002B** ... 183
- Filed, Rules of professional ethics and  
conduct, ch 13 **ARC 9003B** ..... 183

### ADMINISTRATIVE SERVICES DEPARTMENT[11]

- Filed, Years of service incentive; exigency  
leave for covered servicemembers,  
53.12, 63.4(1) **ARC 8979B** ..... 184

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

- Notice, Cattle and bison—pre-entry  
permits and tuberculosis tests, 65.2(3),  
65.4(3) **ARC 8985B** ..... 152

### ALL AGENCIES

- Agency identification numbers ..... 149
- Citation of administrative rules ..... 145
- Schedule for rule making ..... 146

### ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

- Notice, Regulation of greenhouse gas  
emissions, 22.100, 33.3(1) **ARC 8999B** ..... 153
- Filed, Animal feeding operations,  
amendments to ch 65 **ARC 8998B** ..... 185

### HUMAN SERVICES DEPARTMENT[441]

- Notice, Interim assistance reimbursement,  
ch 57 **ARC 8991B** ..... 158

- Filed, Medicaid members—brokerage  
program for provision of nonemergency  
medical transportation, 7.1, 78.13,  
81.10(5) **ARC 8994B** ..... 237
- Filed Without Notice, Interim assistance  
reimbursement, ch 57 **ARC 8990B** ..... 240
- Filed, Food assistance—methodology for  
standard utility allowance, 65.8 **ARC 8992B** .... 242
- Filed, Medical assistance—coverage for  
oxygen and nutritional products, 78.10  
**ARC 8993B** ..... 243
- Filed Without Notice, Nursing  
facilities—modifications to Medicaid  
rate reductions, 81.6, 81.10, 81.20(3)  
**ARC 8995B** ..... 245

### INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

- Notice, Coordination of benefits,  
rescind 38.1 to 38.11, 38.19;  
amend 38.12(1) **ARC 9006B** ..... 159
- Notice, Securities regulation—duties,  
procedures, electronic filing of forms,  
amendments to ch 50 **ARC 9010B** ..... 160

### LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Notice, Conveyance safety program,  
71.1, 71.5, 71.9, 71.11, 71.14, 71.16  
**ARC 8996B** ..... 161
- Filed, OSHA regulations—adoption by  
reference, 10.20, 26.1 **ARC 8997B** ..... 247
- Filed, Bonding requirements for  
out-of-state contractors, 150.2, 150.4,  
150.13 to 150.15 **ARC 8984B** ..... 248

**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Notice, Falconry regulations, 101.1 to 101.5 <b>ARC 9008B</b> .....	163
Notice, Falconry regulations for hunting game, 102.1, 102.2, 102.4 <b>ARC 9007B</b> .....	167
Filed, General license regulations— determination of residency status, 15.2, 15.9 to 15.11 <b>ARC 9004B</b> .....	249
Filed, Suspension, revocation or denial of issuance or renewal of license—college student aid debt, 15.52, 15.53(3), 15.54 <b>ARC 9005B</b> .....	252

**PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Filed Emergency, Pharmacy technicians, amendments to chs 3, 5 <b>ARC 9009B</b> .....	170
Filed Emergency, Temporary designation of controlled substances, 10.38 <b>ARC 8989B</b> .....	176
Filed Emergency, Designation of imitation controlled substances, 10.41 <b>ARC 9000B</b> .....	178

**PUBLIC HEALTH DEPARTMENT[641]**

Filed, Backflow prevention assembly tester registration, 26.2, 26.4, 26.5, 26.8 <b>ARC 8981B</b> .....	252
Filed, Radiation, amendments to chs 38 to 41, 45 <b>ARC 8982B</b> .....	253
Filed Emergency After Notice, Dental screening, 51.1 to 51.16 <b>ARC 8980B</b> .....	179
Filed, Prescription drug donation repository in disaster emergencies, 109.12 to 109.14 <b>ARC 8983B</b> .....	254

**PUBLIC HEARINGS**

Summarized list .....	147
-----------------------	-----

**USURY**

Notice .....	169
--------------	-----

## PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

**PLEASE NOTE:** Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Acting Administrative Code Editor

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### CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2010

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
<b>*Dec. 23 '09*</b>	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sep. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sep. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	<b>***May 26***</b>	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	<b>***June 23***</b>	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sep. 1	Nov. 29
<b>***May 26***</b>	June 16	July 6	July 21	July 23	Aug. 11	Sep. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sep. 29	Dec. 27
<b>***June 23***</b>	July 14	Aug. 3	Aug. 18	Aug. 20	Sep. 8	Oct. 13	Jan. 10 '11
July 9	July 28	Aug. 17	Sep. 1	<b>***Sep. 1***</b>	Sep. 22	Oct. 27	Jan. 24 '11
July 23	Aug. 11	Aug. 31	Sep. 15	Sep. 17	Oct. 6	Nov. 10	Feb. 7 '11
Aug. 6	Aug. 25	Sep. 14	Sep. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '11
Aug. 20	Sep. 8	Sep. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 7 '11
<b>***Sep. 1***</b>	Sep. 22	Oct. 12	Oct. 27	<b>***Oct. 27***</b>	Nov. 17	Dec. 22	Mar. 21 '11
Sep. 17	Oct. 6	Oct. 26	Nov. 10	<b>***Nov. 10***</b>	Dec. 1	Jan. 5 '11	Apr. 4 '11
Oct. 1	Oct. 20	Nov. 9	Nov. 24	<b>***Nov. 24***</b>	Dec. 15	Jan. 19 '11	Apr. 18 '11
Oct. 15	Nov. 3	Nov. 23	Dec. 8	<b>***Dec. 8***</b>	Dec. 29	Feb. 2 '11	May 2 '11
<b>***Oct. 27***</b>	Nov. 17	Dec. 7	Dec. 22	<b>***Dec. 22***</b>	Jan. 12 '11	Feb. 16 '11	May 16 '11
<b>***Nov. 10***</b>	Dec. 1	Dec. 21	Jan. 5 '11	Jan. 7 '11	Jan. 26 '11	Mar. 2 '11	May 30 '11
<b>***Nov. 24***</b>	Dec. 15	Jan. 4 '11	Jan. 19 '11	Jan. 21 '11	Feb. 9 '11	Mar. 16 '11	June 13 '11
<b>***Dec. 8***</b>	Dec. 29	Jan. 18 '11	Feb. 2 '11	Feb. 4 '11	Feb. 23 '11	Mar. 30 '11	June 27 '11
<b>***Dec. 22***</b>	Jan. 12 '11	Feb. 1 '11	Feb. 16 '11	Feb. 18 '11	Mar. 9 '11	Apr. 13 '11	July 11 '11

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
5	Friday, August 20, 2010	September 8, 2010
6	Wednesday, September 1, 2010	September 22, 2010
7	Friday, September 17, 2010	October 6, 2010

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

**\*\*\*Note change of filing deadline\*\*\***

**EDUCATIONAL EXAMINERS BOARD[282]**

Disqualifying criminal convictions, 11.35(2)“a”(2) IAB 7/28/10 <b>ARC 8971B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 18, 2010 1 p.m.
Class B license not issued for driver’s education endorsement, 13.11(1) IAB 7/28/10 <b>ARC 8969B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 18, 2010 1 p.m.
Application for substitute teacher license, 13.16(1) IAB 7/28/10 <b>ARC 8961B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 18, 2010 1 p.m.
Substitutes in driver’s education classroom, 13.16(3) IAB 7/28/10 <b>ARC 8968B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 18, 2010 1 p.m.
Elementary school teacher librarian endorsement, 13.28(21) IAB 7/28/10 <b>ARC 8965B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 18, 2010 1 p.m.
Secondary school teacher librarian endorsement, 13.28(22) IAB 7/28/10 <b>ARC 8966B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 18, 2010 1 p.m.
School teacher librarian endorsement, 13.28(23) IAB 7/28/10 <b>ARC 8967B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 18, 2010 1 p.m.
Paraeducator concentration area—students with vision impairments, 24.4(7) IAB 7/28/10 <b>ARC 8960B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 18, 2010 1 p.m.
Disqualifying criminal convictions, 25.3(1)“b”(1) IAB 7/28/10 <b>ARC 8970B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 18, 2010 1 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Regulation of greenhouse gas emissions, 22.100, 33.3(1) IAB 8/11/10 <b>ARC 8999B</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	September 13, 2010 1 p.m.
Water quality standards—surface water classifications, 61.3(5) IAB 7/28/10 <b>ARC 8978B</b> (See also <b>ARC 8599B</b> , IAB 3/10/10)	Grant Room Jessie M. Parker State Office Bldg. 510 E. 12th St. Des Moines, Iowa	August 23, 2010 1 p.m.

**HUMAN SERVICES DEPARTMENT[441]**

Medicaid coverage for mental health prescription drugs, 78.2(4)“a” IAB 7/28/10 <b>ARC 8975B</b>	Conference Room 7, Level A Hoover State Office Bldg. Des Moines, Iowa	August 18, 2010 9:30 to 10:30 a.m.
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**INSURANCE DIVISION[191]**

Coordination of benefits—updates and clarifications, rescind 38.1 to 38.11, 38.19; amend 38.12(1) IAB 8/11/10 <b>ARC 9006B</b>	330 Maple St. Des Moines, Iowa	September 3, 2010 10:30 a.m.
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**INSURANCE DIVISION[191](cont'd)**

Securities regulations—electronic filing of forms, updates and clarifications, 50.1, 50.10(1), 50.12, 50.18(2), 50.60(7) IAB 8/11/10 <b>ARC 9010B</b>	330 Maple St. Des Moines, Iowa	September 3, 2010 10 a.m.
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**LABOR SERVICES DIVISION[875]**

Conveyance safety program, 71.1, 71.5, 71.9, 71.11, 71.14, 71.16 IAB 8/11/10 <b>ARC 8996B</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	September 1, 2010 9 a.m. (If requested)
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**NATURAL RESOURCE COMMISSION[571]**

Falconry regulations, 101.1 to 101.5 IAB 8/11/10 <b>ARC 9008B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 31, 2010 9 a.m.
Falconry regulations for hunting game, 102.1, 102.2, 102.4 IAB 8/11/10 <b>ARC 9007B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 31, 2010 9 a.m.

**NURSING BOARD[655]**

Intravenous therapy scope of practice for LPNs, 6.1, 6.3, 6.5 IAB 7/14/10 <b>ARC 8930B</b>	Des Moines West Room, Holiday Inn 1050 6th Ave. Des Moines, Iowa	September 15, 2010 6 p.m.
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**PUBLIC HEALTH DEPARTMENT[641]**

Iowa domestic abuse death review team, 91.1 to 91.11 IAB 7/28/10 <b>ARC 8974B</b>	Room 517 Lucas State Office Bldg. Des Moines, Iowa	August 19, 2010 10 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Notification prior to hospital discharge of mentally impaired person, ch 88 IAB 7/28/10 <b>ARC 8941B</b> (See also <b>ARC 8942B</b> )	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	September 7, 2010 9:30 a.m.
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**TREASURER OF STATE[781]**

Accepting credit card payments, ch 8 IAB 7/28/10 <b>ARC 8952B</b>	Lucas Conference Room, First Floor State Treasurer's Office Lucas State Office Bldg. Des Moines, Iowa	August 17, 2010 8:30 a.m.
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**UTILITIES DIVISION[199]**

Exterior flood lighting efficiency standards—LED and solid-state lighting, 35.15(3), 36.8(3) IAB 7/14/10 <b>ARC 8931B</b>	Board Hearing Room 350 Maple St. Des Moines, Iowa	August 24, 2010 10 a.m.
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The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
AGING, DEPARTMENT ON[17]  
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
    Agricultural Development Authority[25]  
    Soil Conservation Division[27]  
ATTORNEY GENERAL[61]  
AUDITOR OF STATE[81]  
BEEF INDUSTRY COUNCIL, IOWA[101]  
BLIND, DEPARTMENT FOR THE[111]  
CAPITAL INVESTMENT BOARD, IOWA[123]  
CITIZENS’ AIDE[141]  
CIVIL RIGHTS COMMISSION[161]  
COMMERCE DEPARTMENT[181]  
    Alcoholic Beverages Division[185]  
    Banking Division[187]  
    Credit Union Division[189]  
    Insurance Division[191]  
    Professional Licensing and Regulation Bureau[193]  
        Accountancy Examining Board[193A]  
        Architectural Examining Board[193B]  
        Engineering and Land Surveying Examining Board[193C]  
        Landscape Architectural Examining Board[193D]  
        Real Estate Commission[193E]  
        Real Estate Appraiser Examining Board[193F]  
        Interior Design Examining Board[193G]  
    Savings and Loan Division[197]  
    Utilities Division[199]  
CORRECTIONS DEPARTMENT[201]  
    Parole Board[205]  
CULTURAL AFFAIRS DEPARTMENT[221]  
    Arts Division[222]  
    Historical Division[223]  
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
    City Development Board[263]  
IOWA FINANCE AUTHORITY[265]  
EDUCATION DEPARTMENT[281]  
    Educational Examiners Board[282]  
    College Student Aid Commission[283]  
    Higher Education Loan Authority[284]  
    Iowa Advance Funding Authority[285]  
    Libraries and Information Services Division[286]  
    Public Broadcasting Division[288]  
    School Budget Review Committee[289]  
EGG COUNCIL, IOWA[301]  
EMPOWERMENT BOARD, IOWA[349]  
ENERGY INDEPENDENCE, OFFICE OF[350]  
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
EXECUTIVE COUNCIL[361]  
FAIR BOARD[371]  
HUMAN RIGHTS DEPARTMENT[421]  
    Community Action Agencies Division[427]  
    Criminal and Juvenile Justice Planning Division[428]  
    Deaf Services Division[429]  
    Persons With Disabilities Division[431]  
    Latino Affairs Division[433]

Status of African-Americans, Division on the[434]  
Status of Women Division[435]  
Status of Iowans of Asian and Pacific Islander Heritage[436]  
HUMAN SERVICES DEPARTMENT[441]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
Employment Appeal Board[486]  
Foster Care Review Board[489]  
Racing and Gaming Commission[491]  
State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
Appeal Board, State[543]  
City Finance Committee[545]  
County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
Energy and Geological Resources Division[565]  
Environmental Protection Commission[567]  
Natural Resource Commission[571]  
Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]  
PUBLIC DEFENSE DEPARTMENT[601]  
Homeland Security and Emergency Management Division[605]  
Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
Professional Licensure Division[645]  
Dental Board[650]  
Medicine Board[653]  
Nursing Board[655]  
Pharmacy Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
Labor Services Division[875]  
Workers' Compensation Division[876]  
Workforce Development Board and Workforce Development Center Administration Division[877]

## ARC 8988B

## ACCOUNTANCY EXAMINING BOARD[193A]

## Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby gives Notice of Intended Action to amend Chapter 12, “Fees,” Iowa Administrative Code.

The proposed amendment adds new subrule 12.2(3) which eliminates the \$25 per month fee only for applicants for reinstatement who have not engaged in acts or services requiring an active license, certificate or permit.

The Board’s intent for imposing a per-month administrative fee on applicants for reinstatement is to provide a financial incentive for licensees, certificate holders, and permittees to comply with statutes and administrative rules. Rule 193A—12.2(542) was adopted to address the serious issue of applicants for reinstatement who neglect renewal requirements. The entire fabric of Board regulation is diminished if persons holding themselves out to the public as CPAs, LPAs, or CPA or LPA firms do not renew in a timely manner. The renewal process ensures compliance with continuing education requirements and peer review, when applicable, and also designates a time period for which the applicant is required to disclose to the Board any disciplinary actions taken by other states or regulatory bodies or criminal charges. The Board has determined that violators of Iowa statutes or administrative rules should incur a fee to cover administrative costs. The per-month fee was not intended to punish licensees, certificate holders, or permittees who comply with the law by refraining from practicing public accountancy on a lapsed or inactive license, certificate, or permit.

This amendment is subject to waiver or variance pursuant to 193A—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before August 31, 2010. Comments should be addressed to Jodi Adams, CPA MBA, Accountancy Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to [jodi.adams@iowa.gov](mailto:jodi.adams@iowa.gov).

This amendment is intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

The following amendment is proposed.

Adopt the following **new** subrule 12.2(3):

**12.2(3) Applicants for reinstatement.** All applicants for reinstatement shall be assessed the \$100 reinstatement fee. The \$25 per month penalty fee described in subrules 12.2(1) and 12.2(2) shall not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active CPA certificate, LPA license, or firm permit to practice as a CPA or LPA firm is required in Iowa. Falsely claiming an exemption from the monthly penalty fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice.

**ARC 8985B****AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 163.1, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 65, “Animal and Livestock Importation,” Iowa Administrative Code.

The proposed amendments provide that pre-entry import permits will not be required for cattle or bison originating from a state with a modified accredited advanced tuberculosis (TB) zone. Additionally, whole-herd TB testing within the past year would not be required for cattle and bison less than six months of age that originate from a modified accredited advanced TB zone. The USDA has split the state of Minnesota into two zones for TB status purposes, and the proposed amendments would allow cattle and bison in the southern Minnesota zone to have the same pre-entry permit and TB testing requirements as states with TB-free status.

Any interested party may make written comments on or before August 31, 2010. Such written comments should be directed to Margaret Thomson, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319, or may be sent by fax to (515)281-6206 or by E-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

These proposed amendments are subject to the Department’s general waiver provision.

These amendments are intended to implement Iowa Code chapter 163.

The following amendments are proposed.

ITEM 1. Amend subrule 65.2(3) as follows:

**65.2(3)** Pre-entry permits are required for:

- a. All Cervidae.
- b. All domestic fowl or poultry originating from an AI- or END-affected state.
- c. Captive wild-type swine.
- d. Cattle and bison originating from states or zones not classified as tuberculosis-free and brucellosis-free.

ITEM 2. Amend subrule 65.4(3) as follows:

**65.4(3)** *Testing.*

a. *Tuberculosis test.* Testing requirements for tuberculosis are as follows:

(1) A tuberculosis test is not required for importation of cattle or bison provided that:

1. The cattle or bison are native to, and originate from, an accredited tuberculosis-free herd (accredited herd number and date of last test must be listed on the CVI), state, or zone; or
2. The cattle (beef-type) and bison are between the ages of 6 months and 18 months and are being imported for feeding purposes.

(2) A negative tuberculosis test is required within 60 days prior to importation for cattle or bison six months of age or older that are not exempted by 65.4(3)“a”(1).

(3) Cattle and bison less than 6 months of age that originate from a herd, state, or zone that is not accredited as tuberculosis-free or as modified accredited advanced must originate from a herd which has been whole-herd tested negative for tuberculosis within 12 months prior to importation.

b. No change.

**ARC 8999B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 455B.131, 455B.133, 455B.134, and 455B.152, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, “Controlling Pollution,” and Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The purpose of this rule making is to ensure that sources of greenhouse gas emissions in Iowa are regulated in the same manner and at the same levels as specified in new federal regulations for greenhouse gases, the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule).

On April 2, 2007, the U.S. Supreme Court found that greenhouse gases, including carbon dioxide, are air pollutants covered by the Clean Air Act (*Massachusetts v. EPA*, 549 U.S. 497). The Court found that the U.S. Environmental Protection Agency (EPA) was required to determine whether emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.

In April 2009, EPA responded to the Court by proposing a finding that greenhouse gases contribute to air pollution that may endanger public health or welfare. On December 7, 2009, EPA issued two distinct findings regarding greenhouse gases, as follows:

1. Endangerment Finding: EPA found that the current and projected atmospheric concentrations of the six key, well-mixed greenhouse gases that include carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>) threaten the public health and welfare of current and future generations; and
2. Cause or Contribute Finding: EPA found that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to greenhouse gas pollution, which, in turn, threatens public health and welfare.

These findings, which were published December 15, 2009, did not impose any requirements on industry or other entities. However, these findings were a prerequisite for finalizing the greenhouse gas standards for light-duty vehicles and for setting a schedule to regulate greenhouse gases from stationary sources.

On March 29, 2010, EPA completed its reconsideration of the December 18, 2008, memorandum entitled “EPA’s Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program,” often called “the Johnson memo.” The final action confirmed that any new pollutant that EPA may regulate becomes covered under the PSD program on the date when the EPA rule regulating that new pollutant takes effect. This action clarified that, for greenhouse gases, the date of PSD program coverage will be January 2, 2011, the date the light-duty vehicle rule is expected to take effect.

On April 1, 2010, EPA finalized the light-duty vehicle rule controlling greenhouse gas emissions. This rule confirmed that January 2, 2011, is the earliest date that a 2012 model year vehicle meeting these rule requirements may be sold in the United States. On that date, Clean Air Act permitting program requirements will apply to stationary sources of greenhouse gases.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

On May 13, 2010, EPA issued the final Tailoring Rule that establishes EPA's approach to addressing greenhouse gas (GHG) emissions from stationary sources under Clean Air Act permitting programs. EPA published the final Tailoring Rule in the Federal Register on June 3, 2010.

The Tailoring Rule for GHG emissions sets thresholds that specify when permits under the PSD and Title V programs are required for new and existing facilities. The Tailoring Rule tailors the requirements of these permitting programs to limit which facilities will be required to obtain PSD and Title V permits. The Tailoring Rule establishes a schedule that will initially focus air permitting programs on the largest sources that are already subject to PSD and Title V requirements. The Tailoring Rule then expands to cover the largest sources of GHG emissions that may not have been previously covered by the PSD or Title V permitting program for other pollutants.

EPA estimates that facilities responsible for nearly 70 percent of the national GHG emissions from stationary sources will be subject to PSD and Title V permitting requirements under the Tailoring Rule, including the nation's largest GHG emitters, such as power plants, refineries, and cement production facilities, as well as other large industrial or commercial emitters. GHG emissions from smaller industrial or commercial facilities will not be covered by the PSD or Title V programs at this time.

The PSD and Title V emissions thresholds for criteria pollutants such as fine particulate, sulfur dioxide and nitrogen dioxide are 100 and 250 tons per year (tpy). EPA has determined that while these thresholds are appropriate for criteria pollutants, they are not feasible for GHGs because GHGs are emitted at much higher levels.

Through the Tailoring Rule, EPA will phase in the GHG permitting requirements in two initial steps outlined below, followed by assessment and rule making to phase in appropriate, additional requirements for controlling GHG emissions from stationary sources.

Step 1 (January 2, 2011, to June 30, 2011): Effective January 2, 2011, only sources currently subject to the PSD permitting program (i.e., sources that are newly constructed or modified in a way that significantly increases emissions of a pollutant other than GHGs) would be subject to permitting requirements for their GHG emissions under the PSD program. For these projects, only GHG increases of 75,000 tpy or more of total GHG (based on potential to emit (PTE) and using a specific formula to calculate "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" as defined in the Tailoring Rule) would be subject to PSD for their GHG emissions.

Similarly, for the Title V program, only sources currently subject to the program (i.e., newly constructed or existing major sources for a pollutant other than GHGs) would be subject to Title V requirements for GHG.

During this time, no sources would be subject to PSD or Title V permitting requirements due solely to GHG emissions.

Step 2 (July 1, 2011, to June 30, 2013): In this phase, PSD permitting requirements will, for the first time, cover new construction projects with a GHG PTE of at least 100,000 tpy CO<sub>2</sub>e even if the projects do not exceed the permitting thresholds for any other pollutant. Modifications at existing facilities that increase their GHG PTE by at least 75,000 tpy CO<sub>2</sub>e will be subject to permitting requirements, even if the modifications do not significantly increase emissions of any other pollutant.

In Step 2, Title V operating permit requirements will, for the first time, apply to sources based on their GHG emissions even if the requirements would not apply based on emissions of any other pollutant. Facilities with a GHG PTE of 100,000 tpy CO<sub>2</sub>e or more will be subject to Title V permitting requirements.

In the Tailoring Rule, EPA commits to undertake another rule making to begin in 2011. The federal rule making will request comments on an additional step for phasing in GHG permitting and may discuss whether certain smaller sources can be permanently excluded from permitting. EPA states that it will not require permitting for smaller sources (those with a GHG PTE below 50,000 tpy) until at least April 30, 2016.

EPA indicates in the Tailoring Rule that EPA will complete a study by the end of April 2015 on remaining GHG permitting burdens that would exist if EPA applied permitting requirements to smaller sources. EPA states that it will complete a rule by April 30, 2016, further addressing permitting for these

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

facilities. EPA may decide that successful streamlining will allow the phase-in of more sources. EPA may also decide that certain smaller sources need to be permanently excluded from GHG permitting.

This rule making proposes to amend the state's Title V and PSD air quality rules for GHG emission regulation so that the state rules match the federal Tailoring Rule (see references to the corresponding federal amendments in the item statements below).

Items 1 and 2 amend the definitions applicable to the Title V Operating Permit (Title V) program. In combination, these two amendments codify the limited conditions under which greenhouse gases are subject to Title V regulation.

Title V requires that an affected facility obtain a Title V operating permit. The Title V operating permit, which is renewed every five years, contains all air emission control requirements that apply to the facility, including the requirements established through construction permitting.

Item 1 amends the definition of "major source" in rule 567—22.100(455B) to add the Title V term "subject to regulation." This proposed change is identical to the amended definition in the final federal Tailoring Rule [see 40 Code of Federal Regulations (CFR) 70.2, definition of "major source," as amended on June 3, 2010].

Item 2 amends rule 567—22.100(455B) to add the definition of "subject to regulation." The proposed definition includes definitions for "greenhouse gases (GHGs)" and "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" and further specifies the Title V applicability criteria for stationary sources of GHG emissions. The proposed definition matches the new federal definition in the Tailoring Rule [see 40 CFR 70.2, definition of "subject to regulation," as amended on June 3, 2010].

Beginning January 2, 2011, power plants, industrial facilities, ethanol plants, state universities, municipal utilities, and other facilities in Iowa that are already considered major sources under the Title V program will be affected under the proposed amendments.

The approximately 280 facilities that are currently subject to the Title V program have already been required to report GHG emissions under Iowa statutes and administrative rules. As these facilities apply for, renew or modify their Title V permits, they must address GHG requirements, such as calculating and reporting GHG emissions using the CO<sub>2</sub>e methodology, and any other applicable requirements.

Beginning on July 1, 2011, additional sources of GHG emissions, such as ethanol plants, municipal utilities, some hospitals, and some larger landfills, will be classified as major sources under Title V.

The Department estimates that 65 additional facilities will become subject to Title V on July 1, 2011. These facilities will need to apply for a Title V permit by July 1, 2012. However, it is expected that one third or more of these 65 newly affected facilities (over 20 facilities) may already have, or may be able to take, enforceable limits in construction permits, such as limits on hours of operation or limits on production throughput, that would potentially reduce GHG emissions below the applicable Title V thresholds.

Items 3 and 4 amend the definitions applicable to the PSD program. In combination, these two amendments codify the limited conditions under which greenhouse gases are subject to PSD program regulation.

New source review (NSR) is a federal term for review and preconstruction permitting of new or modified stationary sources of air pollution. The PSD program is a component of NSR that includes procedures to ensure that air quality standards are maintained. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control emissions. The permit requires the facility to apply Best Available Control Technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control.

Item 3 amends subrule 33.3(1) to revise the definition of "regulated NSR pollutant" to clarify that the term "subject to regulation" is now specifically defined for the PSD program. Additionally, language is moved from paragraph "4" to new paragraph "5." This proposed change matches the amended definition in the final federal Tailoring Rule [see 40 CFR 52.21(b)(50)(iv) and 52.21(b)(50)(v), as amended on June 3, 2010].

Item 4 amends subrule 33.3(1) to add the definition of "subject to regulation" for the PSD program. The proposed definition matches the final federal definition in the Tailoring Rule [see 40 CFR 52.21(b)(49), as amended on June 3, 2010]. The proposed definition includes definitions

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

for “greenhouse gases (GHGs)” and “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” and also specifies the methodology for calculating an emissions increase for GHGs, the applicable thresholds for GHG emissions, and the schedule indicating when the applicability thresholds take effect.

Starting January 2, 2011, facilities already subject to PSD and that also meet the threshold levels for GHG emissions will be impacted. A facility will be subject to PSD permitting requirements if it is a new major stationary source for a regulated NSR pollutant that is not a GHG and also will emit or has the potential to emit 75,000 tpy CO<sub>2</sub>e; or, if the facility is an existing major stationary source for a regulated NSR pollutant that is not a GHG, will have an emissions increase of a regulated NSR pollutant, and will have an emissions increase of 75,000 tpy CO<sub>2</sub>e.

In any given year, the Department receives approximately 5 to 20 PSD project applications. The specific nature of the project will determine if it is subject to PSD requirements for GHGs. The Department expects very few projects to be affected by the new threshold levels for GHG emissions during this first phase.

Beginning July 1, 2011, a facility will be subject to PSD permitting requirements if it is a new stationary source that will emit or has the potential to emit 100,000 tpy CO<sub>2</sub>e; or if the facility is an existing stationary source that emits or has the potential to emit 100,000 tpy CO<sub>2</sub>e and when such stationary source undertakes a physical change or a change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

As noted above, the Department receives approximately 5 to 20 PSD project applications each year. The specific nature of the project will determine if it is subject to PSD requirements for GHGs. Additionally, the Department expects that many new or existing facilities may already have, or may be able to take, enforceable limits in construction permits, such as limits on hours of operation or limits on production throughput, that would potentially reduce GHG emissions below the applicable PSD thresholds.

This proposed rule making does not make any changes to the rules for Title V fees. At this time, owners or operators of Title V facilities are not required to include GHG emissions in calculating their Title V fee payments.

Without this proposed rule making to amend state air quality rules, GHG emission sources would be subject to the current Title V and PSD applicability thresholds of 100 tpy and 250 tpy, which the Department estimates would subject 61,000 facilities in Iowa to Title V permitting and 410 facilities to PSD permitting.

As with other federal air quality regulations, EPA may exercise its federal authority over states that do not implement federal air quality regulations. EPA indicates that it plans to take immediate action in states that fail to apply the GHG thresholds in the Tailoring Rule to the states' Title V and PSD programs by January 2, 2011. To avoid these consequences, the Department is proceeding with this proposed rule making so that the adopted rules will be in effect prior to January 2, 2011, and Iowa may continue to manage the PSD and Title V programs under state authority.

Any person may make written suggestions or comments on the proposed amendments on or before September 14, 2010. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)242-5094; or by electronic mail to [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov).

A public hearing will be held on Monday, September 13, 2010, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than Tuesday, September 14, 2010.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 1. Amend rule **567—22.100(455B)**, definition of “Major source,” as follows:

“*Major source*” means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. and 3. No change.

ITEM 2. Adopt the following new definition of “Subject to regulation” in rule **567—22.100(455B)**:

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on May 7, 2010) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO<sub>2</sub> equivalent emissions.

2. The term “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall represent an amount of GHGs emitted and shall be computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009) and summing the resultant value for each to compute a tpy CO<sub>2</sub>e.

ITEM 3. Amend subrule **33.3(1)**, definition of “Regulated NSR pollutant,” as follows:

“*Regulated NSR pollutant*” means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds and NO<sub>x</sub> are precursors for ozone);

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act; ~~except that any or all hazardous air pollutants either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act, which have not been delisted pursuant to Section 112(b)(3) of the Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.~~ as defined in 33.3(1), definition of “subject to regulation.”

5. Notwithstanding paragraphs “1” through “4,” the definition of “regulated NSR pollutant” shall not include any or all hazardous air pollutants that are either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act and that have not been delisted pursuant to Section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

ITEM 4. Adopt the following new definition of “Subject to regulation” in subrule **33.3(1)**:

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant,

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on May 7, 2010) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs "4" and "5."

2. For purposes of paragraphs "3," "4," and "5," the term "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, "Global Warming Potentials," (as amended on October 30, 2009), and

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO<sub>2</sub>e.

3. The term "emissions increase," as used in this paragraph and in paragraphs "4" and "5," shall mean that both a significant emissions increase (as calculated using the procedures specified in 33.3(2)"c" through 33.3(2)"h") and a significant net emissions increase (as specified in 33.3(1), in the definitions of "net emissions increase" and "significant") occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e and shall be calculated assuming the pollutant GHGs are a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO<sub>2</sub>e rather than calculated by applying the value specified in 33.3(1), in paragraph "2" of the definition of "significant."

4. Beginning January 2, 2011, the pollutant GHGs are subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not a GHG, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more, or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not a GHG, and also will have an emissions increase of a regulated NSR pollutant and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more; and

5. Beginning July 1, 2011, in addition to the provisions in paragraph "4," the pollutant GHGs shall also be subject to regulation:

(a) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO<sub>2</sub>e, or

(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO<sub>2</sub>e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

**ARC 8991B**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to rescind Chapter 57, "Interim Assistance Reimbursement," Iowa Administrative Code, and to adopt a new chapter with the same title.

Interim Assistance Reimbursement is a federal program that allows county assistance agencies to recover funds expended for basic needs of food, clothing and shelter for a county resident who has applied for Supplemental Security Income (SSI). The Department has an agreement with the Social Security Administration to allow the state of Iowa to participate in the program. The Department then enters into agreements with the county assistance agencies for their participation.

When a county resident agrees to participate in the program, the Social Security Administration will issue all or part of the resident's SSI cash benefits for past months directly to the authorized county

## HUMAN SERVICES DEPARTMENT[441](cont'd)

agency to reimburse for expenses the county agency paid in each month. Agreement to participate in the program will also protect the resident's application filing date for SSI if the resident and the county agency follow up within the Social Security Administration's designated time limits. All case processing is done by the county agency. The resident may appeal to the county agency if the resident disagrees with the amount of funds distributed.

This Notice is published to solicit comments on rules that were Adopted and Filed Without Notice on July 21, 2010, and are published herein as **ARC 8990B**. That rule making:

- Adds county commissions of veteran affairs to the definition of "county agency."
- Removes requirements that are more appropriately reserved for inclusion in the agreement between county agencies and the Department. New agreement language has been issued by the Social Security Administration. The Department will be entering into new agreements with county agencies that will take effect on September 25, 2010. Taking the agreement provisions out of the rules will allow agreements to be modified more easily when changes are needed to administer the program.
- Removes a provision for automatic renewal of the agreement between the Department and the county agency. The Department had considered requiring periodic review of the agreement, but has determined that these agreements are not "service contracts" within the meaning of Iowa Code chapter 8F.
- Provides that county agencies shall submit Form 470-1947, Certificate of Authority, directly to the Social Security Administration, with a copy to the Department.

These rules do not provide for waivers in specified situations because participation in this program is limited to agencies that enter into an agreement with the Department. Conditions for participation are dictated by an agreement between the Social Security Administration and the state.

Any interested person may make written comments on the proposed rules on or before August 31, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

**ARC 9006B**

## **INSURANCE DIVISION[191]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code chapters 509 and 514, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 38, "Coordination of Benefits," Iowa Administrative Code.

The rules in Chapter 38 are in accordance with the model provisions for coordination of benefits as promulgated by the National Association of Insurance Commissioners. The proposed amendments to the rules eliminate an outdated division of the chapter and update and clarify duties and procedures. The Division intends that these amendments shall become effective November 10, 2010.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 3, 2010. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on September 3, 2010, at 10:30 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

## INSURANCE DIVISION[191](cont'd)

Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 509 and 514.

The following amendments are proposed.

ITEM 1. Rescind and reserve **191—Chapter 38**, Division I.

ITEM 2. Amend subrule 38.12(1) as follows:

**38.12(1)** The purpose of this ~~division~~ chapter is to adopt the new model provisions for coordination of benefits (COB) as promulgated by the National Association of Insurance Commissioners (NAIC).

ITEM 3. Rescind rule **191—38.19(509,514)**.

**ARC 9010B****INSURANCE DIVISION[191]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 502.605 and 2010 Iowa Acts, Senate File 2201, section 3, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

The rules in Chapter 50 provide duties and procedures to follow for the regulation of securities offerings and those who engage in the securities business in Iowa. The proposed amendments to the rules update and clarify duties and procedures and require electronic filing of certain forms pursuant to 2010 Iowa Acts, Senate File 2201, section 3. The Division intends that persons and entities shall comply with the amendments beginning November 10, 2010, for securities offerings that are made in Iowa on or after November 10, 2010.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 3, 2010. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa; fax (515)281-3059.

Also, there will be a public hearing on September 3, 2010, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 502 and 2010 Iowa Acts, Senate File 2201, section 3.

The following amendments are proposed.

ITEM 1. Rescind the definition of “NASD” in rule **191—50.1(502)**.

ITEM 2. Adopt the following **new** definition of “FINRA” in rule **191—50.1(502)**:  
“*FINRA*” means the Financial Industry Regulatory Authority.

ITEM 3. Strike “NASD” wherever it appears in **191—Chapter 50** and insert “FINRA” in lieu thereof.

ITEM 4. Amend subrule 50.10(1) as follows:

**50.10(1)** An applicant for an initial registration to conduct business as a broker-dealer must:

## INSURANCE DIVISION[191](cont'd)

*a.* File a current Form BD. If the applicant is a member of FINRA, Form BD shall be filed with CRD. If the applicant is not a member of FINRA, Form BD shall be signed and notarized and filed with the administrator; and

~~*b.* File with the administrator copies of the applicant's most recent audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and including, at a minimum, a balance sheet, income statement and net capital calculation;~~

~~*e. b.* Pay a \$200 filing fee. If the applicant is a member of FINRA, the fee shall be remitted to the CRD. If the applicant is not a member of FINRA, the fee shall be remitted to the administrator; and~~

~~*d.* File with the administrator a completed Iowa Broker-Dealer Affidavit form including:~~

~~(1) A signed and notarized statement indicating that the applicant engaged in no securities transactions with persons in Iowa prior to registration or, if applicable, identifying all past and current accounts of persons in Iowa; and~~

~~(2) A signed consent to service of process pursuant to Iowa Code section 502.611. The form may be obtained from the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066; via E-mail at [iowa.sec@iid.state.ia.us](mailto:iowa.sec@iid.state.ia.us); or from the division Web site at <http://www.iid.state.ia.us/division/securities>.~~

ITEM 5. Amend subparagraph **50.12(1)“a”(4)** as follows:

(4) Pay a ~~\$30~~ \$40 filing fee to FINRA if applying for registration as an agent of ~~an~~ a FINRA member broker-dealer, or to the administrator if applying for registration as an agent of a non-FINRA member broker-dealer.

ITEM 6. Amend paragraph **50.12(4)“e”** as follows:

*e.* A ~~\$30~~ \$40 filing fee.

ITEM 7. Amend paragraph **50.18(2)“d”** as follows:

*d.* Pays a ~~\$30~~ \$40 filing fee.

ITEM 8. Adopt the following new subrule 50.60(7):

**50.60(7)** An investment company that makes a notice filing under subrule 50.60(2) on or after January 1, 2011, shall do so after implementing a system that will allow the investment company to file such submissions electronically by following the instructions on the insurance division's Web site at [www.iid.state.ia.us](http://www.iid.state.ia.us).

**ARC 8996B**

## **LABOR SERVICES DIVISION[875]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 71, “Administration of the Conveyance Safety Program,” Iowa Administrative Code.

These amendments make numerous changes concerning inspection of construction personnel hoists; change the rules to include the reduction in height of a construction personnel hoist erected to facilitate demolition; and allow the Labor Commissioner to combine two inspections of one conveyance.

The purposes of these amendments are to protect the health and safety of the public; to harmonize the rules with the industry standard for construction personnel hoists; and to implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on August 31, 2010, a public hearing will be held on September 1, 2010, at 9 a.m. in the Capitol View Room

## LABOR SERVICES DIVISION[875](cont'd)

at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than September 1, 2010, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@jwd.iowa.gov](mailto:kathleen.uehling@jwd.iowa.gov).

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Rescind the definition of “CPH extension” in rule **875—71.1(89A)**.

ITEM 2. Adopt the following **new** definition of “CPH jump” in rule **875—71.1(89A)**:

“CPH jump” means the addition or removal of mast or tower allowing a change in the hoist service elevation of a CPH.

ITEM 3. Amend paragraph **71.5(2)“j”** as follows:

*j.* For a CPH, the number of CPH ~~extensions~~ jumps planned, the planned dates for each CPH ~~extension~~ jump, and the change in the number of ~~new~~ floors anticipated with each CPH ~~extension~~ jump.

ITEM 4. Amend subrule 71.5(3) as follows:

**71.5(3)** A CPH installation permit issued in response to an application submitted in full compliance with this subrule permits each planned CPH ~~extension~~ jump. Each CPH ~~extension~~ jump shall be considered an alteration. The fee submitted for a CPH installation permit shall be the total of the CPH installation permit fee as set forth in subrule 71.16(3) and the CPH alteration permit fee as set forth in subrule 71.16(4).

ITEM 5. Amend paragraph **71.5(6)“a”** as follows:

*a.* For a CPH, the installation permit shall expire upon completion of the last CPH ~~extension~~ jump.

ITEM 6. Amend subrule 71.9(5) as follows:

**71.9(5)** If a complete installation permit application was submitted for a CPH pursuant to subrule 71.5(3), at least seven days’ advance notice of each CPH ~~extension~~ jump shall be provided to the labor commissioner. For a CPH installed without an installation permit prior to July 1, 2008, a completed alteration permit application shall be submitted to the labor commissioner at least seven days before each CPH ~~extension~~ jump.

ITEM 7. Amend subrule 71.11(2), introductory paragraph, as follows:

**71.11(2)** *When inspections will occur.* When the timing of two different types of inspection on a single conveyance coincide, a state inspector may perform both inspections in one visit.

ITEM 8. Amend subparagraph **71.11(2)“a”(1)** as follows:

(1) Each CPH shall be inspected at intervals not to exceed three months. All other periodic conveyance ~~Conveyance~~ inspections by state inspectors shall be conducted annually unless the labor commissioner determines resources do not allow annual inspections. If the labor commissioner determines quarterly inspections of CPHs and annual inspections of other state-inspected conveyances are not feasible due to insufficient resources, the labor commissioner shall determine the inspection schedule.

ITEM 9. Amend paragraph **71.11(2)“b,”** introductory paragraph, as follows:

*b. Acceptance inspections.* A CPH shall be inspected pursuant to the schedule in ANSI A10.4 – 2007, Chapter 26. For all other conveyances, an ~~A~~ acceptance inspection shall occur:

ITEM 10. Amend paragraph **71.11(3)“a”** as follows:

*a.* The labor commissioner’s designee shall inspect altered conveyances, CPHs, previously dormant conveyances being returned to service, wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), relocated conveyances, and new conveyances.

## LABOR SERVICES DIVISION[875](cont'd)

ITEM 11. Amend paragraph **71.14(1)“b,”** introductory paragraph, as follows:

*b.* ~~Annual, three-year, and five-year safety~~ Safety tests shall be made on all conveyances pursuant to the schedules and procedures set forth in:

ITEM 12. Amend subrule 71.16(2) as follows:

**71.16(2)** ~~Annual~~ Periodic inspections. Fees shall be remitted to the division of labor services within 30 days of the date of inspection. The fees for ~~annual~~ periodic inspections shall be as follows:

*a.* Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), television tower elevators and hand-powered elevators): \$75.

*b.* Escalators: \$75.

*c.* Moving walks: \$75.

*d.* Dumbwaiters: \$60.

*e.* Hand-powered elevators: \$60.

*f.* Wheelchair lifts: \$60.

*g.* Television tower elevators: \$300.

*h.* Wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A): \$150.

*i.* CPHs: ~~\$300~~.

(1) Annual: \$300.

(2) Quarterly: \$150.

ITEM 13. Adopt the following **new** subrule 71.16(3):

**71.16(3)** *Fee waiver*. When a state inspector combines in one visit two different types of inspection on a single conveyance, the commissioner may waive the lesser of the fees.

**ARC 9008B****NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 101, “Falconry Regulations,” Iowa Administrative Code.

The proposed changes are requested by Department staff and the Iowa Falconers Association (IFA) to update the existing rules and align them with recent changes made to the Code of Federal Regulations by the U.S. Department of the Interior, Fish and Wildlife Service’s Migratory Bird Office.

Any interested person may make written suggestions or comments on the proposed amendments on or before September 7, 2010. Such written materials should be directed to Steve Derman, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail [steve.derman@dnr.iowa.gov](mailto:steve.derman@dnr.iowa.gov). Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515.

Also, there will be a public hearing on August 31, 2010, at 9 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special needs, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 481A.

## NATURAL RESOURCE COMMISSION[571](cont'd)

The following amendments are proposed.

ITEM 1. Amend rule 571—101.1(481A) as follows:

**571—101.1(481A) Falconry regulations.** No person may take, transport, or possess any raptor without having first obtained a valid state/federal falconer's permit. ~~Only raptors from the family Accipitridae (excluding the bald eagle), the family Falconidae, and the great horned owl of the family Strigidae may be taken, transported, or possessed, except any species listed as endangered or threatened.~~ Falconry permit holders shall comply with the department's rules and with the current Code of Federal Regulations pertaining to falconry. Only the following raptors may be taken from the wild: American kestrel, Cooper's hawk, Ferruginous hawk, Goshawk, Great horned owl, Gyrfalcon, Harris' hawk, Merlin, Prairie falcon, Red-tailed hawk, Rough-legged hawk, and Sharp-shinned hawk. Raptors taken from the wild shall not be sold, bartered or traded. All wild raptors legally trapped or taken by a resident or nonresident falconer must be marked with an Iowa marker band provided by the department.

**101.1(1)** ~~Said~~ A falconry permit allows for the purchase, capture, possession and use of designated legal raptors in hunting, subject to state regulations.

**101.1(2)** A falconry ~~license permit~~ may be issued to any person 14 or more years of age or older who has successfully passed a written examination provided or by the department and approved by the U.S. Department of the Interior covering basic biology, care and handling of raptors, laws, regulations or other appropriate subject matter, with a minimum score of 80 percent, and who has satisfied the minimum requirements for keeping raptors as determined by inspection of the applicant's facilities. In the event an individual fails the examination, this individual may reapply.

**101.1(3)** There shall be three classes of ~~falconer's~~ falconer permits as follows:

*a. Apprentice falconer.*

(1) ~~Applicant~~ An applicant shall be at least 14 years old. A and shall have a sponsor who is a holder of a general or master falconry license is required for the first two years in which an apprentice permit is held, regardless of the age of the permittee permit and who has at least two years of active experience as a general falconer. A qualifying sponsor must submit a signed letter to the department in which the sponsor agrees to assist and mentor the apprentice falconer for the duration of the apprenticeship. A sponsor may have no more than two apprentices at any one time.

(2) Apprentice permit holders shall not possess more than one raptor and may not obtain more than one raptor for replacement during any 12-month period. Apprentice permit holders shall possess only a red-tailed hawk (*Buteo jamaicensis*). Apprentice permit holders shall be restricted from taking nestling or fledgling birds.

(3) A sponsor has the right to withdraw sponsorship at any time and, upon withdrawal, must submit a signed letter to the department requesting withdrawal of sponsorship. If an ~~apprenticeship~~ apprentice falconer fails to successfully complete the required two-year apprenticeship, the red-tailed hawk will shall be transferred to the sponsor of record. The sponsor will be required to properly care for the bird until it is transferred to another falconer or hatched back into the wild.

(4) Upon completion of the apprenticeship requirements, the apprentice's sponsor must submit a signed letter of endorsement confirming that the apprentice has satisfied the terms and conditions of the apprenticeship as required by these rules and approved by the department and the Iowa Falconers Association (IFA) Apprenticeship Guideline Manual.

*b. General falconer.* ~~Applicant~~ An applicant shall be at least 18 years old. Applicant An applicant shall have at least two years<sup>2</sup> years of field experience in the practice of falconry at the apprentice level or its equivalent; ~~this shall be field experience and~~ the mere keeping of raptors shall not count as field experience and ~~will be~~ is strongly discouraged. General ~~license~~ permit holders shall not possess more than ~~two~~ three raptors and may not take more than one raptor for a replacement bird from the wild during any 12-month period. Licensed general class falconers may purchase properly marked captive-bred raptors only from a federally licensed raptor ~~propagator~~ propagators.

*c. Master falconer.* ~~Applicant~~ An applicant shall have at least five years<sup>2</sup> years of field experience in the practice of falconry at the general level or its equivalent. The keeping of raptors without actively hunting the bird(s) shall not be considered field experience. A master falconer shall possess no more

## NATURAL RESOURCE COMMISSION[571](cont'd)

than ~~three~~ five raptors at any one time and be permitted to take no more than two replacement birds from the wild in any 12-month period. ~~Licensed master~~ Master class falconers may purchase properly marked captive-bred raptors only from a federally licensed ~~raptor propagator~~ propagators.

**101.1(4)** ~~All falconry~~ Falconry permits are \$61.50, are valid for a three-year period, and are nontransferable ~~and~~. Permits shall expire June 30 of the third year after issuance. Permits may be renewed without examination following the falconer's submission of an annual report of birds possessed during the previous year and provided that the department of natural resources is satisfied as to the competency of the applicant whose permit has expired.

**101.1(5)** A federal raptor propagation permit is required before any ~~person~~ raptor propagator may take, possess, transport, sell, purchase, barter, or transfer any captive-bred raptor, raptor egg, or raptor semen for propagation or sale purposes.

This rule is intended to implement Iowa Code section 481A.48 and conforms to the federal regulations promulgated under the "Migratory Bird Treaty Act."

ITEM 2. Amend paragraph **101.2(1)"c"** as follows:

*c. Outdoor facilities.* Outdoor facilities (weathering area) shall be fenced and covered with netting or wire, or roofed to protect the birds from disturbance and attack by predators ~~except that perches more than 6½ feet high need not be covered or roofed.~~ The enclosed area shall be large enough to ensure the birds cannot strike the fence when flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.

ITEM 3. Amend subrule 101.2(2) as follows:

**101.2(2) Equipment.** The following items shall be in the possession of the applicant before the applicant can obtain a permit ~~or license~~.

*a. Jesses.* At least one pair of Alymeri jesses or similar-type jesses constructed of pliable, high-quality leather or suitable synthetic material to be used when any raptor is flown free. (Traditional one-piece jesses may be used on raptors when the raptors are not being flown.)

*b. to d.* No change.

*e. Weighing device.* A reliable working scale or balance suitable for weighing the raptor(s) held and graduated to increments of not more than ~~one-half ounce (15 gram)~~ two-tenths of an ounce, or five grams, shall be provided by the falconer.

*f. and g.* No change.

ITEM 4. Amend rule 571—101.3(481A) as follows:

**571—101.3(481A) Taking and possession provision.** The taking of raptors from the wild ~~in Iowa~~ by resident falconers shall be limited to the following conditions:

**101.3(1)** Nestling birds may be taken only by general class or master class permit holders. ~~All wild raptors legally trapped or taken by a resident falconer must be marked with a black federal marker band provided by the department.~~

**101.3(2)** Young birds not yet capable of flight may be taken at any time following hatch, ~~provided, however, that an individual~~ by a general class or master class falconer. The falconer may take no more than two nestlings, and ~~that~~ at least one nestling shall be left in any nest from which a nestling is taken. The taking of nestlings and branchers is permitted only between ~~May 21~~ April 1 and ~~June 30~~ July 31. Removal of eggs from nests is prohibited.

**101.3(3)** First year (passage) birds shall be taken only from ~~September 15~~ August 1 through ~~January~~ March 31.

**101.3(4)** Only American kestrels (*Falco sparverius*) and great horned owls (*Bubo virginianus*) may be taken when over one year old; however, the permissible period for taking shall be no different than that prescribed for passage birds of all other legal species.

**101.3(5)** No permittee shall employ any method of taking raptors which is injurious to the bird.

**101.3(6)** Any species except endangered or threatened species or exotic birds, the import of which has been banned by the international convention, federal regulation or the ~~natural resource commission~~ department of natural resources, may be possessed and used for falconry provided the license holder can

## NATURAL RESOURCE COMMISSION[571](cont'd)

provide evidence that the bird was legally acquired, ~~and provided that no~~. No one may import a raptor into Iowa or export a raptor out of Iowa, for a period greater than 30 days, without having first obtained written permission of the department of natural resources.

**101.3(7) Recapture.** Banded raptors that are lost to the wild through accident may be retrapped provided that the department of natural resources has been advised of the loss and is notified of the attempt to recapture. ~~Should~~ If the banded raptor ~~be~~ is recaptured, the department of natural resources shall be notified of the recovery within 48 hours.

**101.3(8) Nonresident raptor trapping.** A permit may be issued upon application by a nonresident for the purpose of taking a raptor in Iowa, provided that the applicant's resident state is listed in Paragraph (K), Subpart C, Part 21-29, Chapter 1, of Title 50, Code of Federal Regulations, as a participating state, and the applicant's resident state ~~issues nonresident raptor trapping permits or licenses, or otherwise provides for the taking of raptors by nonresidents.~~ Nonresidents shall submit a photocopy of a ~~valid import permit from their resident state and a photocopy of a current, valid, state/ or federal falconry permit.~~ Nonresident raptor trapping permits shall be issued only in the general class or master class.

*a. Trapping provisions.* Trapping of raptors in Iowa by ~~nonresidents permitted nonresident falconers~~ shall be limited to the following species: red-tailed hawk, American kestrel, and great horned owl legal species listed in these rules.

*b. Marking requirements.* Raptors legally trapped by nonresidents must be marked with a ~~black federal~~ an Iowa marker band provided by the department. No raptor shall be transported from Iowa without first having had the ~~black Iowa~~ Iowa marker band attached. Permittees may, with written permission from the department, provide their own ~~black~~ marker band issued by their state of residency. Permittees who provide their own ~~black~~ marker band shall place the band on the raptor immediately upon capture, and must notify the department within five days of the capture and of the corresponding ~~black~~ marker band number.

*c. Fees.* Fees for nonresident raptor trapping applications shall be reciprocal to the fee charged by the applicant's resident state. If the applicant's resident state does not provide for a nonresident raptor trapping fee, then the Iowa nonresident raptor trapping application fee shall be ~~\$50~~ \$100.

*d. Restrictions.* Nonresident falconers may apply for one raptor trapping permit per trapping season. All nonresident raptor trapping permits shall be valid for a period not to exceed 60 consecutive days, beginning on the date of issuance. No nestlings or raptor eggs may be taken. First year (passage) birds may be taken only from September ~~15~~ 1 through January 31. The nonresident raptor trapping permit shall be valid for only one raptor of the species designated on the permit. The raptor trapping permit shall be carried by the permittee while in the act of trapping and the transportation of any subsequently trapped raptor.

ITEM 5. Amend rule 571—101.4(481A) as follows:

**571—101.4(481A) Annual reports.** Each holder of a falconer's permit shall submit an annual report to the department of natural resources by July 31 of each year. This report shall list all raptors in possession on the preceding thirtieth day of June and any raptor held during the year—by species, sex (if known), age (if known), date acquired and where or from whom acquired, and whether the raptor escaped, died, was recaptured, or was released during this time period and ~~when~~ the date on which the event occurred.

ITEM 6. Amend rule 571—101.5(481A) as follows:

**571—101.5(481A) Other provisions.**

**101.5(1)** ~~No permittee shall purchase, offer for sale, sell, trade or barter any native raptors acquired from the wild in Iowa. A holder of a federal raptor propagation permit may not sell, trade, barter, purchase, or offer for sale any captive-reared, properly marked raptor of a native species nesting in Iowa, except captive-reared peregrine falcons (Falco peregrinus), hybrids of peregrine falcons, and nonnesting species. Any raptor captured with a research radio transmitter attached must be reported to the department within five days, and the raptor shall be released immediately.~~

## NATURAL RESOURCE COMMISSION[571](cont'd)

**101.5(2)** No permittee may take, purchase, receive or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless such permittee submits federal Form 3-186A (Migratory Bird Acquisition/Disposition Report), completed in accordance with the instructions on the form, to the issuing regional fish and wildlife service office within five days of such transaction. ~~Falconry permit holders~~ A falconry permittee shall notify the department of natural resources in writing of the death, replacement, loss, release or temporary transfer or other such change in the status of their the permittee's raptors within five days of such occurrence; provided, however, that written. Written authorization shall be obtained from the department of natural resources before a replacement raptor may be secured; and further provided that each. Each dead bird raptor shall be surrendered to the department of natural resources or disposed of at the department's direction. Primary, secondary, and tail feathers may be retained and exchanged from these birds ~~for imping purposes only~~ to imp or repair broken feathers.

**101.5(3)** Raptor exportation and importation permits may be issued to resident and nonresident falconers licensed to practice falconry in other states. Such permits shall be issued only when the export or import term will exceed 30 days. In the case of exportation or importation terms of less than 30 days, the permittee shall have in possession a photocopy of raptor possession documentation (Form 3-186A) and a photocopy of a valid state or federal falconry permit. Persons wishing to participate in hunting will be required to possess appropriate hunting licenses or permits.

**101.5(4)** A falconry permit holder shall obtain written authorization from the department of natural resources before any raptor not indigenous to the state is intentionally released to the wild, at which time the marker band from the released bird raptor shall be removed and surrendered to the department of natural resources. The marker band from an intentionally released bird raptor which is indigenous to the state shall also be removed and surrendered to the department of natural resources. A standard federal bird band shall be attached to such birds raptors by the state or a service-authorized federal bird bander whenever possible. A falconer shall not permanently release a captive-bred raptor to the wild.

**101.5(5)** A raptor possessed under a state/ or federal falconry permit may be temporarily held by a person other than the permittee only if that person is otherwise authorized to possess raptors; and only if the raptor is accompanied at all times by the properly completed Form 3-186A (Migratory Bird Acquisition/Disposition Report) designating the permittee as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

**101.5(6)** A general or master falconer may charge a fee for presentation of a raptor education program to the public. The fee cannot exceed the amount required to cover the falconer's expenses.

**101.5(7)** When a hybrid or exotic falconry bird is flown free, it must be fitted with two working radio telemetry transmitters.

**ARC 9007B**

**NATURAL RESOURCE COMMISSION[571]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 102, “Falconry Regulations for Hunting Game,” Iowa Administrative Code.

The proposed changes have been requested by Department staff and the Iowa Falconers Association (IFA) to update the existing rules and align them with recent changes made to the Code of Federal Regulations by the U.S. Department of the Interior, Fish and Wildlife Service’s Migratory Bird Office.

Any interested person may make written suggestions or comments on the proposed amendments on or before September 7, 2010. Such written materials should be directed to Steve Demand, Department

## NATURAL RESOURCE COMMISSION[571](cont'd)

of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail [steve.dermand@dnr.iowa.gov](mailto:steve.dermand@dnr.iowa.gov). Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515.

Also, there will be a public hearing on August 31, 2010, at 9 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special needs, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 481A.

The following amendments are proposed.

ITEM 1. Amend rule 571—102.1(481A) as follows:

**571—102.1(481A) General.** Game may be taken annually, by ~~licensed~~ permitted falconers only, subject to the following:

**102.1(1) Definitions.** For the purposes of this rule, the following definitions are used:

“*Falconer*” means any person ~~licensed~~ permitted under the provisions of 571—Chapter 101, Iowa Administrative Code, who pursues the sport of falconry.

“*Falconry*” means the sport of taking ~~quarry game~~ by means of a ~~trained~~ raptor.

“*Raptor*” means ~~a live migratory bird of the family Accipitridae, other than the bald eagle (Haliaeetus leucocephalus), or of the family Falconidae, or the great horned owl (Bubo virginianus) of the family Strigidae~~ any of the following wild species: American kestrel, Cooper’s hawk, Ferruginous hawk, Goshawk, Great horned owl, Gyrfalcon, Harris’ hawk, Merlin, Prairie falcon, Red-tailed hawk, Rough-legged hawk, Sharp-shinned hawk and any captive-bred species used for falconry.

**102.1(2) Licenses and permits.** In addition to the falconry ~~license permit~~, a falconer must have all other licenses, stamps, and permits required by law. A falconry observer is not required to be licensed for hunting, but an observer shall not assist in the hunt.

**102.1(3) Other requirements.** Except for the provisions of rule 571—102.2(481A), any person taking game by falconry must comply with all other statutes and rules governing this activity.

ITEM 2. Amend subrules 102.2(2) and 102.2(4) as follows:

**102.2(2) Geese.** The season for taking geese by means of falconry may vary among goose hunting zones. Falconry seasons for white-fronted geese and light geese (white and blue-phase snow geese and Ross’ geese) shall begin each year on the first day of the conventional (gun) hunting season for these geese in each zone, as described in rule 571—91.3(481A), and continue in each zone for 107 consecutive days. Falconry seasons for Canada geese and brant shall be open concurrently with the conventional (gun) hunting season for these geese as well as any days between the ~~end of the second segment of the season for Canada geese and brant and the start of the third segment of the season~~ first, second, or third segments of the conventional (gun) hunting season for Canada geese and brant.

**102.2(4) Hawking hours and limits.** Hawking hours for migratory game birds are one-half hour before sunrise to sunset. The daily bag limit ~~may~~ shall include no more than three migratory game birds, singly or in aggregate. The possession limit is twice the daily bag limit. There are no hawking hour restrictions for nonmigratory game during the legal season.

ITEM 3. Amend rule 571—102.4(481A) as follows:

**571—102.4(481A) Means and methods of take.** ~~No person shall have in possession any firearm or any other implement for the taking of game while hunting game by means of falconry. No falconer or observer may carry a firearm while in the field with a raptor or in the act of falconry.~~ No falconer or observer may carry a firearm while in the field with a raptor or in the act of falconry.

**USURY**

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

August 1, 2009 — August 31, 2009	5.75%
September 1, 2009 — September 30, 2009	5.50%
October 1, 2009 — October 31, 2009	5.50%
November 1, 2009 — November 30, 2009	5.50%
December 1, 2009 — December 31, 2009	5.50%
January 1, 2010 — January 31, 2010	5.50%
February 1, 2010 — February 28, 2010	5.50%
March 1, 2010 — March 31, 2010	5.75%
April 1, 2010 — April 30, 2010	5.75%
May 1, 2010 — May 31, 2010	5.75%
June 1, 2010 — June 30, 2010	5.75%
July 1, 2010 — July 31, 2010	5.50%
August 1, 2010 — August 31, 2010	5.25%

## ARC 9009B

## PHARMACY BOARD[657]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 3, “Pharmacy Technicians,” and Chapter 5, “Pharmacy Support Persons,” Iowa Administrative Code.

The amendments define “uncertified pharmacy technician” and amend the definition of “pharmacy technician” to include pharmacy technician trainee, certified pharmacy technician, and uncertified pharmacy technician. Pursuant to 2010 Iowa Acts, House File 2531, section 112, the amendments establish the requirements for extension of the deadline for national certification to December 31, 2013, for a pharmacy technician who was registered prior to January 1, 2010, and who worked as a pharmacy technician for a minimum 2,000 hours during the 18-month period prior to registration and who continues to work a minimum 2,000 hours during any 18-month period. The amendments specify and clarify the technical functions that may be delegated to each of the pharmacy technician classifications, including certified pharmacy technician, pharmacy technician trainee, and uncertified pharmacy technician. References to pharmacy technicians or to specific classifications of pharmacy technicians throughout the chapters have been clarified, and outdated language and information regarding national certification and registrations issued prior to July 1, 2010, are eliminated. The amendments modify the definition of “pharmacy technician” in Chapter 5 to comply with the amended definition in Chapter 3.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

The amendments were approved during the July 22, 2010, meeting of the Board of Pharmacy.

Notice of Intended Action was published in the June 30, 2010, Iowa Administrative Bulletin as **ARC 8891B**. July 20, 2010, was the deadline for public comment on the Notice. The Board received comments from one pharmacy regarding the amendments, and changes were made in response to those comments. The Board finds, pursuant to Iowa Code section 17A.4(3), that further notice and public participation are impracticable due to the need to make these amendments effective as soon as possible in order to protect the public health by ensuring understanding by the regulated professions of the requirements and practice restrictions defined by these amendments. These amendments implement provisions of a legislative amendment that became effective on April 29, 2010, providing that the deadline for national certification be extended for qualifying pharmacy technicians.

The Board also finds, pursuant to Iowa Code subsection 17A.5(2)“b”(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective upon filing with the Administrative Rules Coordinator on July 23, 2010. These amendments confer a benefit to the regulated community and to the public. The extension of the deadline for certification of pharmacy technicians and the resultant creation of the uncertified pharmacy technician classification became effective in Iowa law upon enactment on April 29, 2010.

These amendments became effective July 23, 2010.

These amendments are intended to implement Iowa Code section 155A.6A as amended by 2010 Iowa Acts, House File 2531, section 112.

The following amendments are adopted.

ITEM 1. Amend rule **657—3.1(155A)**, definition of “Pharmacy technician,” as follows:

“*Pharmacy technician*” or “*technician*” means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, as provided in rules 657—3.22(155A) through 657—3.24(155A), and includes a certified pharmacy technician, a pharmacy technician trainee, and an uncertified pharmacy technician.

ITEM 2. Adopt the following **new** definition of “Uncertified pharmacy technician” in rule **657—3.1(155A)**:

“*Uncertified pharmacy technician*” or “*uncertified technician*” means a pharmacy technician who has not attained national certification and who qualifies for the time extension to attain national certification as provided in rule 657—3.6(155A).

## PHARMACY BOARD[657](cont'd)

ITEM 3. Amend rule 657—3.2(155A) as follows:

**657—3.2(155A) Purpose of registration.** A registration program for pharmacy technicians is established for the purposes of determining the competency of a pharmacy technician or of an applicant for registration as a ~~pharmacy technician, a certified pharmacy technician, or a pharmacy technician trainee,~~ or uncertified pharmacy technician and for the purposes of identification, tracking, and disciplinary action for violations of federal or state pharmacy or drug laws or regulations.

ITEM 4. Amend rule 657—3.3(155A) as follows:

**657—3.3(155A) Registration required.** Any person employed in Iowa as a pharmacy technician, except a pharmacist-intern whose pharmacist-intern registration is in good standing with the board, shall obtain and maintain during such employment a current registration as a ~~pharmacy technician, certified pharmacy technician, or pharmacy technician trainee,~~ or uncertified pharmacy technician pursuant to these rules. An individual accepting employment as a ~~pharmacy technician or technician trainee~~ in Iowa who fails to register as a ~~pharmacy technician, certified pharmacy technician, or technician trainee,~~ or uncertified technician as provided by these rules may be subject to disciplinary sanctions.

**3.3(1) Licensed health care provider.** Except as provided in this rule, a licensed health care provider whose registration or license is in good standing with and not subject to current disciplinary sanctions or practice restrictions imposed by the licensee's professional licensing board and who assists in the technical functions of the practice of pharmacy shall be required to register as a ~~pharmacy technician, certified pharmacy technician, or technician trainee,~~ or uncertified technician pursuant to these rules.

**3.3(2) Original application required.** Any person not currently registered with the board as a pharmacy technician or ~~certified technician~~ shall complete ~~an~~ the appropriate application for registration within 30 days of accepting employment in an Iowa pharmacy as a pharmacy technician. Such application shall be received in the board office before the expiration of this 30-day period.

**3.3(3) No change.**

**3.3(4) Registration number.** Each pharmacy technician, ~~certified technician, and technician trainee~~ registered with the board will be assigned a unique registration number.

ITEM 5. Amend rule 657—3.5(155A) as follows:

**657—3.5(155A) Certification of pharmacy technicians.** ~~Prior to July 1, 2010, the certification and recertification of pharmacy technicians shall be voluntary and not mandatory. Beginning~~ Except as provided in rule 657—3.6(155A) or subrule 3.5(3), effective July 1, 2010, ~~the certification of all~~ pharmacy technicians shall be required to be nationally certified as provided by this rule. National certification does not ~~supplant~~ replace the need for licensed pharmacist control over the performance of delegated functions, nor does national certification exempt the pharmacy technician from registration pursuant to these rules.

**3.5(1) ~~Voluntary certification~~ Certification prior to July 1, 2010.** An individual who holds a valid current national certification from the Institute for the Certification of Pharmacy Technicians (ICPT) or the Pharmacy Technician Certification Board (PTCB) and who acquired such certification prior to July 1, 2010, shall be deemed to have met the requirement for national certification beginning July 1, 2010, provided the certification is maintained in current standing.

**3.5(2) Required certification effective July 1, 2010.** Beginning July 1, 2010, ~~a pharmacy technician shall acquire~~ national certification acquired through successful completion of any NCCA-accredited pharmacy technician certification program and examination, ~~the successful completion of which~~ fulfills the requirement for national certification.

**3.5(3) Pharmacy technician trainee.** ~~Beginning~~ Except as provided in rule 657—3.6(155A), effective July 1, 2009, a person who is in the process of acquiring national certification as a pharmacy technician shall register with the board as a pharmacy technician trainee. The registration shall be issued for a period of one year and shall not be renewed.

## PHARMACY BOARD[657](cont'd)

**3.5(4) *Certified pharmacy technician.*** Beginning July 1, 2010, all applicants for a new pharmacy technician registration, except as provided by subrule 3.5(3), and all applicants for renewal of a pharmacy technician registration except as provided in rule 657—3.6(155A), shall provide proof of current national pharmacy technician certification and shall complete the application for certified pharmacy technician registration.

ITEM 6. Adopt the following new rule 657—3.6(155A):

**657—3.6(155A) Extension of deadline for national certification.** A pharmacy technician who meets all of the criteria identified in this rule shall not be required to acquire national certification prior to December 31, 2013. The pharmacy technician shall register with the board as an uncertified pharmacy technician and shall maintain that registration during all periods of employment as a pharmacy technician. To qualify for this extension, the uncertified pharmacy technician shall meet all of the following criteria:

**3.6(1) *Prior registration.*** The pharmacy technician shall have registered as a pharmacy technician prior to January 1, 2010;

**3.6(2) *Minimum prior employment.*** The pharmacy technician shall have worked as a pharmacy technician for at least 2,000 hours in the 18-month period immediately before submission of the application for renewal of the pharmacy technician's registration as evidenced by one or more affidavits as provided in paragraph 3.8(5) "d"; and

**3.6(3) *Minimum continued employment.*** The pharmacy technician shall continue to work as a pharmacy technician for at least 2,000 hours during any 18-month period between January 1, 2010, and December 31, 2013, or until the pharmacy technician attains national certification.

ITEM 7. Amend rule 657—3.8(155A) as follows:

**657—3.8(155A) Application form.**

**3.8(1) *Required information.*** The application for a ~~pharmacy technician registration~~, certified pharmacy technician registration, ~~or pharmacy technician trainee registration~~, or uncertified pharmacy technician registration shall include the following:

*a. to e.* No change.

**3.8(2) to 3.8(4)** No change.

**3.8(5) *Additional information.*** The following additional information shall be required from an applicant for the specified registration.

*a. and b.* No change.

*c. Licensed health care provider.* In addition to the additional information required by paragraph "~~a~~" or "~~b~~" "*a,*" "*b*" or "*d*" as applicable, a licensed health care provider shall provide evidence that the licensee's professional license or registration is current and in good standing and is not subject to current disciplinary sanctions or practice restrictions imposed by the licensee's professional licensing authority.

*d. Uncertified pharmacy technician.* The applicant for uncertified pharmacy technician registration shall submit with the application for registration renewal one or more affidavits signed by the pharmacists in charge of one or more Iowa pharmacies where the applicant practiced as a pharmacy technician during the 18 months prior to submission of the application for registration. Affidavits shall be on a form provided by the board office.

**3.8(6)** No change.

ITEM 8. Amend rule 657—3.9(155A) as follows:

**657—3.9(155A) Registration term and renewal.** Prior to July 1, 2008, a pharmacy A pharmacy technician registration shall expire on the second last day of the birth month following initial registration, with the exception that a new pharmacy technician registration issued within the two months immediately preceding the applicant's birth month shall expire on the third last day of the birth month following initial registration. A pharmacy technician registration issued between July 1, 2008, and July 1, 2009, except as provided in subrule 3.9(1), shall expire no later than June 30, 2010 as

## PHARMACY BOARD[657](cont'd)

provided in this rule for the specified registration. ~~Registration~~ The board shall not require continuing education for renewal of a pharmacy technician registration.

**3.9(1) and 3.9(2)** No change.

**3.9(3)** *Uncertified pharmacy technician registration.* Beginning June 1, 2010, a registration for a pharmacy technician who qualifies for the time extension for certification as provided by rule 657—3.6(155A) shall expire the second last day of the birth month following the latest scheduled registration renewal. In no case shall a registration for an uncertified pharmacy technician expire later than December 31, 2013, unless the pharmacy technician attains national certification as provided in subrule 3.5(2) and is reclassified as a certified pharmacy technician.

ITEM 9. Amend rule 657—3.10(155A) as follows:

**657—3.10(155A) Registration fee.** The following fees for initial registration and registration renewal shall apply to the specified registration applications filed within the following time frames. The appropriate fee shall be submitted with the registration application in the form of a personal check, certified check or cashier's check, or a money order payable to the Iowa Board of Pharmacy.

**3.10(1)** *Registration prior to July 1, 2009.* ~~The fee for obtaining an initial technician registration, for obtaining an initial certified pharmacy technician registration, or for renewal of a technician or certified technician registration prior to July 1, 2009, shall be \$40 plus applicable surcharge pursuant to rule 657—30.8(155A).~~

**3.10(2)** ~~3.10(1)~~ *Registration beginning July 1, 2009* Certified or uncertified pharmacy technician registration. The fee for obtaining an initial certified pharmacy technician registration or for biennial renewal of a certified pharmacy technician registration ~~beginning July 1, 2009, or an uncertified pharmacy technician registration~~ shall be \$50 plus applicable surcharge pursuant to rule 657—30.8(155A).

**3.10(3)** ~~3.10(2)~~ *Technician trainee registration beginning July 1, 2009.* The fee for a one-year pharmacy technician trainee registration shall be \$20 plus applicable surcharge pursuant to rule 657—30.8(155A).

ITEM 10. Amend rule 657—3.12(155A) as follows:

**657—3.12(155A) Registration certificates.** ~~The certificate of technician registration issued by the board to a pharmacy technician, certified pharmacy technician, or pharmacy technician trainee, or uncertified pharmacy technician is the property of and shall be maintained by the registered technician. The certificate or a copy of the certificate shall be maintained in each pharmacy where the pharmacy technician, certified pharmacy technician, or pharmacy technician trainee works. Each pharmacy utilizing pharmacy technicians shall be responsible for verifying that all pharmacy technicians, certified technicians, and technician trainees working in the pharmacy are registered, and that technician registrations remain current and active.~~

ITEM 11. Amend rule 657—3.13(155A) as follows:

**657—3.13(155A) Notifications to the board.** ~~A pharmacy technician, certified pharmacy technician, or technician trainee shall report to the board within ten days a change of the technician's name, address, or pharmacy employment status.~~

ITEM 12. Amend subrule 3.18(2) as follows:

**3.18(2)** *Misrepresentation prohibited.* A pharmacy technician shall not represent himself or herself in any manner as a pharmacist or pharmacist-intern. A pharmacy technician shall not represent himself or herself in any manner as a certified pharmacy technician unless the technician has attained national pharmacy technician certification. ~~A technician trainee shall not represent himself or herself in any manner as a certified pharmacy technician, as a pharmacist-intern, or as a pharmacist.~~

## PHARMACY BOARD[657](cont'd)

ITEM 13. Amend rule 657—3.20(155A) as follows:

**657—3.20(155A) Responsibility of supervising pharmacist.** The ultimate responsibility for the actions of a pharmacy technician, ~~a certified pharmacy technician, or a pharmacy technician trainee~~ shall remain with the supervising pharmacist.

ITEM 14. Amend rule 657—3.22(155A) as follows:

**657—3.22(155A) Technical functions.** At the discretion of the supervising pharmacist, the following technical functions which may be delegated to a pharmacy technician, a certified pharmacy technician, or a pharmacy technician trainee include, but are not limited to, as specified in the following: subrules.

**3.22(1) Certified pharmacy technician.** Under the supervision of a pharmacist, a certified pharmacy technician may perform technical functions delegated by the supervising pharmacist including, but not limited to, the following:

*a.* 1. ~~Performing~~ Perform packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.

*b.* 2. ~~Accepting~~ Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's office.

*c.* 3. ~~Contacting~~ Contact prescribers to obtain prescription refill authorizations.

*d.* 4. ~~Processing~~ Process pertinent patient information, including information regarding allergies and disease state.

*e.* 5. ~~Entering~~ Enter prescription and patient information into the pharmacy computer system.

*f.* 6. ~~Inspecting~~ Inspect drug supplies provided and controlled by an Iowa-licensed pharmacy but located or maintained outside the pharmacy department, including but not limited to drug supplies maintained in an ambulance or other emergency medical service vehicle, a long-term care facility, a hospital patient care unit, or a hospice facility.

*g.* 7. ~~Affixing~~ Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.

*h.* 8. ~~Prepackaging~~ Prepackage or ~~labeling~~ label multidose and single-dose packages of drugs, including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients.

*i.* Perform drug compounding processes for nonsterile compounding as provided in 657—Chapter 20.

*j.* Perform drug compounding processes for sterile compounding as provided in 657—Chapter 13.

*k.* As provided in rule 657—3.24(155A), accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or by the prescriber's agent.

**3.22(2) Pharmacy technician trainee.** Under the supervision of a pharmacist, a pharmacy technician trainee may perform only the following technical functions delegated by the supervising pharmacist:

*a.* Perform packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.

*b.* Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's office.

*c.* Contact prescribers to obtain prescription refill authorizations.

*d.* Process pertinent patient information, including information regarding allergies and disease state.

*e.* Enter prescription and patient information into the pharmacy computer system.

*f.* Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.

*g.* Prepackage or label multidose and single-dose packages of drugs, including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients.

*h.* Under the supervision of a pharmacist who provides training and evaluates and monitors trainee competence in the compounding processes, perform drug compounding processes for nonsterile compounding as provided in 657—Chapter 20.

## PHARMACY BOARD[657](cont'd)

i. Under the supervision of a pharmacist who provides training and evaluates and monitors trainees, and contingent on successful completion of appropriate media fill testing processes, perform drug compounding processes for sterile compounding as provided in 657—Chapter 13.

3.22(3) Uncertified pharmacy technician. Under the supervision of a pharmacist, an uncertified pharmacy technician may perform technical functions delegated by the supervising pharmacist limited to the following:

a. Select the appropriate stock supply of a prescription drug from the pharmacy drug supply shelves to process a prescription drug order.

b. Count dosage forms of prescription drugs into appropriate prescription vials or containers pursuant to prescription drug orders. Uncertified pharmacy technicians shall not prepackage or label multidose and single-dose packages of drugs, including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients.

c. Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.

d. Return or place stock supplies of prescription drugs in the appropriate locations on the pharmacy drug supply shelves.

ITEM 15. Amend rule 657—3.23(155A) as follows:

**657—3.23(155A) Tasks a pharmacy technician shall not perform.** A pharmacy technician, ~~a certified pharmacy technician, or a pharmacy technician trainee~~ shall not be authorized to perform any of the following judgmental tasks:

1. to 6. No change.

ITEM 16. Amend rule 657—3.24(155A) as follows:

**657—3.24(155A) New prescription drug orders or medication orders.** At the discretion of the supervising pharmacist, ~~a pharmacy technician or a~~ certified pharmacy technician may be allowed to accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or by the prescriber's agent if the ~~pharmacy technician or~~ certified pharmacy technician has received appropriate training pursuant to the pharmacy's policies and procedures. The supervising pharmacist shall remain responsible for ensuring the accuracy, validity, and completeness of the information received by the ~~pharmacy technician or~~ certified pharmacy technician. The pharmacist shall contact the prescriber to resolve any questions, inconsistencies, or other issues relating to the information received by the ~~pharmacy technician or~~ certified pharmacy technician that involve a pharmacist's professional judgment.

ITEM 17. Amend rule 657—3.28(147,155A) as follows:

**657—3.28(147,155A) Unethical conduct or practice.** Violation by a pharmacy technician, ~~certified pharmacy technician, or pharmacy technician trainee~~ of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule 657—3.30(155A).

**3.28(1) Misrepresentative deeds.** A pharmacy technician, ~~certified technician, or technician trainee~~ shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

**3.28(2) Confidentiality.** In the absence of express written authorization from the patient or written order or direction of a court, except where the best interests of the patient require, a pharmacy technician, ~~certified technician, or technician trainee~~ shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, a person duly authorized by law to receive such information, or as otherwise provided in rule 657—8.16(124,155A), any of the following:

a. to d. No change.

## PHARMACY BOARD[657](cont'd)

**3.28(3)** No change.

**3.28(4) *Unethical conduct or behavior.*** A pharmacy technician, ~~certified technician, or technician trainee~~ shall not exhibit unethical behavior in connection with the technician's pharmacy employment. Unethical behavior shall include, but is not limited to, the following acts: verbal or physical abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

ITEM 18. Amend rule 657—3.29(155A) as follows:

**657—3.29(155A) Denial of registration.** The executive director or designee may deny an application for registration as a ~~pharmacy technician, certified pharmacy technician, or pharmacy technician trainee,~~ or uncertified pharmacy technician for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

An individual whose application for registration as a ~~pharmacy technician, certified pharmacy technician, or pharmacy technician trainee,~~ or uncertified pharmacy technician is denied pursuant to this rule may, within 30 days after issuance of the notice of denial, appeal to the board for reconsideration of the application.

ITEM 19. Amend subrule 3.30(2) as follows:

**3.30(2) *Sanctions.*** The board may impose the following disciplinary sanctions:

*a.* Revocation of a ~~pharmacy technician, certified pharmacy technician, or pharmacy technician trainee,~~ or uncertified pharmacy technician registration.

*b.* Suspension of a ~~pharmacy technician, certified pharmacy technician, or pharmacy technician trainee,~~ or uncertified pharmacy technician registration until further order of the board or for a specified period.

*c.* Nonrenewal of a ~~pharmacy technician or certified pharmacy technician~~ or uncertified pharmacy technician registration.

*d. to i.* No change.

ITEM 20. Amend **657—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 147.72, 155A.23, 155A.33, and 155A.39 and Iowa Code ~~Supplement sections 155A.6 and section 155A.6A~~ as amended by 2010 Iowa Acts, House File 2531, section 112.

ITEM 21. Amend rule **657—5.1(155A)**, definition of "Pharmacy technician," as follows:

*"Pharmacy technician" or "technician"* means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, and who is registered pursuant to 657—Chapter 3, and includes a certified pharmacy technician, a pharmacy technician trainee, and an uncertified pharmacy technician.

[Filed Emergency 7/23/10, effective 7/23/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8989B**

**PHARMACY BOARD[657]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 124.301, the Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment rescinds current rule 657—10.38(124) and adopts new rule 657—10.38(124) in lieu thereof. The new rule places four synthetic cannabinoids into Schedule I of the Iowa Uniform Controlled

## PHARMACY BOARD[657](cont'd)

Substances Act (CSA). Substances classified into Schedule I of the CSA have been determined to have a high potential for abuse and have no accepted medical use in the United States.

These synthetic cannabinoids are similar to the tetrahydrocannabinol (THC) from marijuana in their hallucinogenic and addictive effects. However, these substances are from 5 to 800 times more potent than the THC from marijuana. A person can become so intoxicated from smoking or ingesting products treated with these substances that the person ends up in the emergency room with seizures, tremors, acute anxiety, panic, elevated blood pressure, vomiting, hallucinations, rapid heart rate, or rapid respiration, including a loss of consciousness. In recent months, numerous deaths have been related to smoking or other consumption of products containing or treated with one or more of these synthetic cannabinoids. There is currently no accepted urine drug test for the presence of these substances, making it difficult for medical professionals to diagnose and treat a person suffering from the effects of these substances.

Products treated with one or more of these substances are currently available over the counter, marketed as incense in convenience stores, smoke shops, and other retailers, and over the Internet. A few of the currently marketed products, including K2, Spice, and Red Dragon Smoke, consist of mixtures of dried herbs that are sprayed with one or more of these synthetic cannabinoids. Although product packaging cautions that the products are not for human consumption, these products are being abused by adults and minors. Due to the inability to detect these substances in standard urine tests, these products are very attractive to individuals such as criminal offenders, addiction treatment clients, commercial driver licensees, and others with safety-sensitive jobs who are routinely subject to urine drug tests.

Waiver or variance of this rule will not be considered.

The amendment was approved during the July 20, 2010, meeting of the Board of Pharmacy.

The Board finds, pursuant to Iowa Code section 17A.4(3), that notice and public participation are unnecessary and impracticable due to the immediate need for this amendment in order to ensure the safety and health of the public.

The Board finds, pursuant to Iowa Code subsection 17A.5(2)“b”(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on July 21, 2010. This amendment confers a benefit on the public by removing potentially dangerous products from the retail market.

This amendment became effective July 21, 2010.

This amendment is intended to implement Iowa Code section 124.201.

The following amendment is adopted.

Rescind rule 657—10.38(124) and adopt the following new rule in lieu thereof:

**657—10.38(124) Temporary designation of controlled substances.**

**10.38(1)** Amend Iowa Code subsection 124.204(4) by adding the following new paragraphs:

*ai.* Dexanabinol, (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol, also known as HU-211.

*aj.* 1-butyl-3-(1-naphthoyl) indole, also known as JWH-073.

*ak.* 1-pentyl-3-(1-naphthoyl) indole, also known as JWH-018.

*al.* Phenol, CP 47, 497 and homologues, or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, where side chain n=5, and homologues where side chain n=4, 6, or 7.

**10.38(2)** Reserved.

[Filed Emergency 7/21/10, effective 7/21/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 9000B****PHARMACY BOARD[657]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 124A.2 and 147.76, the Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment adopts new rule 657—10.41(124A). The new rule identifies four synthetic cannabinoids as imitation controlled substances subject to Iowa Code chapter 124A. These substances are not classified as controlled substances subject to the Iowa Controlled Substances Act but have been determined, because these substances can be substituted for a controlled substance to imitate the effect of a controlled substance, to be imitation controlled substances.

These synthetic cannabinoids are similar to the tetrahydrocannabinol (THC) from marijuana in their hallucinogenic and addictive effects. However, these substances are from 5 to 800 times more potent than the THC from marijuana. A person can become so intoxicated from smoking or ingesting products treated with these substances that the person ends up in the emergency room with seizures, tremors, acute anxiety, panic, elevated blood pressure, vomiting, hallucinations, rapid heart rate, or rapid respiration, including a loss of consciousness. In recent months, numerous deaths have been related to smoking or other consumption of products containing or treated with one or more of these synthetic cannabinoids. There is currently no accepted urine drug test for the presence of these substances, making it difficult for medical professionals to diagnose and treat a person suffering from the effects of these substances.

Products treated with one or more of these substances are currently available over the counter, marketed as incense in convenience stores, smoke shops, and other retailers, and over the Internet. A few of the currently marketed products, including K2, Spice, and Red Dragon Smoke, consist of mixtures of dried herbs that are sprayed with one or more of these synthetic cannabinoids. Although product labels indicate that the products are not for human consumption, these products are being abused by adults and minors, and information available through various sources, including the Internet, encourages the smoking or inhalation of these products as an alternative to marijuana. Many sources identify products treated with these synthetic cannabinoids as "better than marijuana," often resulting in a more intense and sustained euphoria. Due to the inability to detect these substances in standard urine tests, these products are very attractive to individuals such as criminal offenders, addiction treatment clients, commercial driver licensees, and others with safety-sensitive jobs who are routinely subject to urine drug tests.

Waiver or variance of this rule will not be considered.

The amendment was approved during the July 22, 2010, meeting of the Board of Pharmacy.

The Board finds, pursuant to Iowa Code section 17A.4(3), that notice and public participation are unnecessary and impracticable due to the immediate need for this amendment in order to ensure the safety and health of the public.

The Board finds, pursuant to Iowa Code subsection 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on July 22, 2010. This amendment confers a benefit on the public by identifying potentially dangerous products as imitation controlled substances that produce effects similar to or more potent than drugs controlled pursuant to the federal and state Controlled Substances Acts.

This amendment became effective July 22, 2010.

This amendment is intended to implement Iowa Code section 124A.2.

The following amendment is adopted.

PHARMACY BOARD[657](cont'd)

Adopt the following **new** rule 657—10.41(124A):

**657—10.41(124A) Designation of imitation controlled substances.**

**10.41(1) Synthetic cannabinoids.** The following synthetic cannabinoids, including products by whatever trade name that are treated, sprayed, or saturated with these synthetic cannabinoids, are designated imitation controlled substances subject to the provisions of Iowa Code chapter 124A:

- a. Dexanabinol, (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol, also known as HU-211.
- b. 1-butyl-3-(1-naphthoyl) indole, also known as JWH-073.
- c. 1-pentyl-3-(1-naphthoyl) indole, also known as JWH-018.
- d. Phenol, CP 47, 497 and homologues, or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, where side chain n=5, and homologues where side chain n=4, 6, or 7.

**10.41(2) Product examples.** Some currently marketed products containing the imitation controlled substances identified in subrule 10.41(1) include K2, Red Dragon Smoke, Spice, K2 Spice, Mojo, Smoke, Skunk, K2 Summit, and Pandora Potpourri.

[Filed Emergency 7/22/10, effective 7/22/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8980B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 135.17, the Department of Public Health hereby amends Chapter 51, "Dental Screening," Iowa Administrative Code.

The rules in Chapter 51 describe the school dental screening requirement, including dental screening applicants, providers, and documentation. These amendments incorporate changes made in 2010 Iowa Acts, House File 2144.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 19, 2010, as **ARC 8763B**. A public hearing was held June 8, 2010, through the Iowa Communications Network at five locations. Written comments were received from 12 school nurses and 2 dental hygienists. Comments received concerned the following:

- The time frame during which a screening is valid. The amendment allows for the screening to be valid for four months after the enrollment date, which is less restrictive than previous rule language; the concern was addressed in the amendments by allowing exceptions to the four-month timeline;
- The requirement that only the Iowa Department of Public Health Certificate of Dental Screening form be used; the concern was addressed in these amendments by allowing qualified health care providers to record information from another form;
- The difficulty of implementing the amended rules during the 2010-2011 school year; the concern will be addressed through communication with and technical assistance provided to school nurses.

In addition, the following comments were received:

- There was a request to add gingivitis and referral information to the Certificate of Dental Screening form, which will be considered in the next printing of the form.
- There was a request for paperless record keeping; this would require additional funding.
- There was a comment about the difficulty of implementation due to lack of consequences for students who do not comply; this would require new legislation.
- There was a comment about the definition of "enrollment date"; this will be clarified through communication with school nurses and the public.

Comments were also received in support of the amendments.

The adopted amendments are identical to those published under Notice.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

The Department finds that, pursuant to Iowa Code section 17A.5(2)“b”(2), the normal effective date of the amendments should be waived and these amendments should be made effective upon filing, as it confers a benefit to schools and families to have the amendments effective prior to the 2010-2011 school year.

The State Board of Health adopted these amendments on July 14, 2010.

These amendments became effective on July 14, 2010.

These amendments are intended to implement 2009 Iowa Code Supplement section 135.17 as amended by 2010 Iowa Acts, House File 2144, sections 2 and 3.

The following amendments are adopted.

ITEM 1. Amend **641—Chapter 51**, parenthetical implementation statute, as follows:  
(~~82GA, ch 146, SF 2111~~ 135)

ITEM 2. Amend the following definitions in rule **641—51.2(135)**:

“*Applicant*” means any person seeking first-time enrollment in ~~an Iowa elementary school or high school~~ kindergarten or ninth grade in a public or accredited nonpublic elementary school or high school in Iowa.

“*Dental hygienist*” means a person licensed to practice as a dental hygienist ~~pursuant to Iowa Code chapter 153.~~

“*Dentist*” means a person licensed to practice as a dentist ~~pursuant to Iowa Code chapter 153.~~

“*Elementary school*” means kindergarten, ~~if provided, and grades one through grade six~~ in an Iowa school district or accredited nonpublic school.

~~“*Infection or injury*”~~ *Severe infection*” means ~~soft tissue laceration, excessive bleeding, or swelling, or a broken or dislodged tooth or pus discharge; or an abscess.~~

“*Nurse*” means a person licensed to practice as a registered nurse or advanced registered nurse practitioner pursuant to Iowa Code chapter 152.

“*Physician*” means a person licensed to practice medicine and surgery or osteopathic medicine and surgery ~~pursuant to Iowa Code chapter 148, 150, or 150A.~~

“*Physician assistant*” means a person licensed to practice as a physician assistant ~~pursuant to Iowa Code chapter 148C.~~

“*Requires dental care*” means that tooth decay or a white spot lesion is suspected in one or more teeth or that gum infection is suspected.

“*Requires urgent dental care*” means that obvious tooth decay is present in one or more teeth, ~~the child is experiencing pain, or there is evidence of injury or severe infection or injury,~~ or the child is experiencing pain.

ITEM 3. Rescind the definition of “Transfer student” in rule **641—51.2(135)**.

ITEM 4. Adopt the following new definitions in rule **641—51.2(135)**:

“*Gum infection*” means that gum (gingival) tissue is red, bleeding, or swollen.

“*Injury*” means soft tissue laceration or a broken or dislodged tooth.

“*Recorder*” means a dentist, dental hygienist, physician, physician assistant, or nurse who is authorized to record screening information and sign the Certificate of Dental Screening form.

ITEM 5. Amend rule 641—51.3(135) as follows:

**641—51.3(135) Persons included.** The dental screening requirements specified in this chapter apply to all persons newly enrolled or attempting to enroll for the first time seeking first-time enrollment in kindergarten or ninth grade in a public or accredited nonpublic elementary school or high school in Iowa.

ITEM 6. Amend subrules 51.7(1) and 51.7(2) as follows:

**51.7(1) Elementary school.** To be valid, a minimum of one dental screening shall be performed on an applicant no earlier than three years of age but prior to reaching six years of age no later than four months after the enrollment date.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**51.7(2)** High school. To be valid, a minimum of one dental screening shall be performed on an applicant ~~within no earlier than one year prior to the enrollment date~~ and no later than four months after the enrollment date.

ITEM 7. Amend subrule 51.8(1) as follows:

**51.8(1)** To be valid, the certificate of dental screening shall be the department certificate or a form approved in writing by the department.

*a.* The Certificate of Dental Screening form is available on the department's Web site at [http://www.idph.state.ia.us/hpcdp/oral health.asp](http://www.idph.state.ia.us/hpcdp/oral%20health.asp) or is available by calling the department at (866)528-4020.

~~*b.* Elementary school. The certificate of dental screening shall be signed by a dentist, dental hygienist, physician, physician assistant, or nurse.~~

~~*c.* High school. The certificate of dental screening shall be signed by a dentist or dental hygienist.~~

~~*d.* *b.* The certificate of dental screening shall include all information required by 641—51.9(82GA, ch146, SF2111 135).~~

*c.* The certificate of dental screening may also be deemed valid by the department if the department determines that the information on the certificate substantially complies with the dental screening requirements.

ITEM 8. Amend rule 641—51.9(135) as follows:

**641—51.9(135) Dental screening documentation.**

**51.9(1)** *Student information.* A person ~~performing~~ authorized to perform a dental screening required by this chapter shall record the following student information or ensure that such information is recorded on the certificate of dental screening provided or approved in writing by the department of public health in cooperation with the department of education:

1. Name (first and last);
2. Birth date;
3. Parent or guardian name;
4. Telephone numbers (home or mobile);
5. Address (street, city, and county);
6. School;
7. Grade level; and
8. Gender; and
9. ~~Treatment needs (no obvious problems, requires dental care, requires urgent dental care);~~
10. ~~Date of dental screening;~~
11. ~~Provider type;~~
12. ~~Provider name, business address, and telephone number; and~~
13. ~~Provider signature.~~

**51.9(2)** *Screening information.* A person authorized to perform a dental screening required by this chapter shall record the following screening information on the certificate of dental screening provided or approved in writing by the department of public health in cooperation with the department of education:

1. Date of dental screening;
2. Treatment needs (no obvious problems, requires dental care, requires urgent dental care);
3. Provider type;
4. Provider name, business address, and telephone number; and
5. Provider or recorder signature and credentials.

ITEM 9. Amend subrule 51.12(2) as follows:

**51.12(2)** By ~~June 30~~ May 31 annually, each local board of health shall furnish the department with evidence for the preceding school year that each child enrolled in any public or accredited nonpublic school within the local board's jurisdiction met the dental screening requirement.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 10. Amend **641—Chapter 51**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 146, and 2008 Iowa Acts, Senate File 2144~~ 2009 Iowa Code Supplement section 135.17 as amended by 2010 Iowa Acts, House File 2144, sections 2 and 3.

[Filed Emergency After Notice 7/14/10, effective 7/14/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 9002B****ACCOUNTANCY EXAMINING BOARD[193A]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby rescinds Chapter 10, “Continuing Education,” Iowa Administrative Code, and adopts new Chapter 10 with the same title.

The new chapter provides clarity so that accounting professionals will have more understandable rules to follow for continuing professional education (CPE).

During the process of drafting the proposed rules, the Board solicited participation from several constituent groups. A task force that included members of the Board as well as members from the Iowa Society of Certified Public Accountants and Accountants Association of Iowa, consultants and business valuation professionals, employees of the IRS and the Iowa Department of Revenue and several CPAs involved in private industry reviewed several drafts of these rules prior to submission of the Notice of Intended Action.

Notice of Intended Action was published in the June 16, 2010, Iowa Administrative Bulletin as **ARC 8835B**.

Seven written comments were received from CPAs working in the industry and raised the following concerns:

1. Commenters questioned the new limit on the amount of CPE credit that can be obtained from meetings that include meals. The Board implemented the new limit because it determined that learning while eating does not constitute quality CPE.
2. Commenters misunderstood what is required when CPE documentation is submitted. Only one form of documentation is required.
3. Commenters interpreted subrule 10.1(2) to require all CPE to be in the accounting field. Subrule 10.1(2) states that CPE will be considered for approval if it maintains or improves the CPAs’ or LPAs’ competence in their current employment.

These rules are identical to those published under Notice of Intended Action.

These rules are subject to waiver or variance pursuant to 193A—Chapter 5.

These rules are intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

These rules will become effective on January 1, 2011.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 10] is being omitted. These rules are identical to those published under Notice as **ARC 8835B**, IAB 6/16/10.

[Filed 7/23/10, effective 1/1/11]

[Published 8/11/10]

[For replacement pages for IAC, see IAC Supplement 8/11/10.]

**ARC 9003B****ACCOUNTANCY EXAMINING BOARD[193A]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby rescinds Chapter 13, “Rules of Professional Conduct,” and adopts a new Chapter 13, “Rules of Professional Ethics and Conduct,” Iowa Administrative Code.

The new chapter is intended to make the rules of professional ethics and conduct clearer and more understandable for accounting professionals working in Iowa.

During the process of drafting these rules, the Board solicited participation from several constituent groups. A task force that included members of the Board as well as members from the Iowa Society of Certified Public Accountants and the Accountants Association of Iowa, consultants and business

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

valuation professionals, employees of the IRS and the Iowa Department of Revenue and several CPAs involved in private industry reviewed several drafts of these rules prior to submission of the Notice of Intended Action. No comments were received.

Notice of Intended Action was published in the June 16, 2010, Iowa Administrative Bulletin as **ARC 8836B**. No comments were received.

One change has been made from the Notice of Intended Action. The title of the securities Act in subrule 13.9(3) has been corrected to read “the Iowa uniform securities Act.”

These rules are intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

These rules will become effective on January 1, 2011.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 13] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 8836B**, IAB 6/16/10.

[Filed 7/23/10, effective 1/1/11]

[Published 8/11/10]

[For replacement pages for IAC, see IAC Supplement 8/11/10.]

**ARC 8979B****ADMINISTRATIVE SERVICES DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services hereby amends Chapter 53, “Pay,” and Chapter 63, “Leave,” Iowa Administrative Code.

These amendments delete the years of service incentive program rule, as this program no longer exists.

These amendments also reflect changes required by the National Defense Authorization Act for FY 2010. These changes allow family members of servicemembers in the regular component of the Armed Forces to be eligible for exigency leave. Previously, exigency leave was only available for family members of members of the National Guard or Reserves. The changes also limit exigency leave to family members of covered servicemembers deployed or deploying to a foreign country.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 2, 2010, as **ARC 8781B**. No public comments were received on these amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective September 15, 2010.

These amendments are intended to implement Iowa Code section 8A.104(5), the Family and Medical Leave Act, and the National Defense Authorization Act for FY 2010.

The following amendments are adopted.

ITEM 1. Rescind rule **11—53.12(8A)**.

ITEM 2. Amend paragraphs **63.4(1)“e”** and **“f”** as follows:

*e.* A qualifying exigency, as defined in ~~the National Defense Authorization Act for FY 2008 (NDAA), federal FMLA regulations,~~ arising out of the fact that the employee’s spouse, son, daughter or parent is a covered ~~military member~~ servicemember on covered active duty, or has been notified of an impending call or order to covered active duty, ~~in support of a contingency operation a foreign country.~~

*f.* To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember, pursuant to the ~~NDAA~~ FMLA regulations.

[Filed 7/13/10, effective 9/15/10]

[Published 8/11/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8998B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 459.103 and 459A.104, the Environmental Protection Commission hereby amends Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The amendments update the Department's rules to conform with statutory amendments in 2002 Iowa Acts (Senate File 2293); in 2006 Iowa Acts pertaining to open feedlot stockpiles (Senate File 2369); and in 2009 Iowa Acts pertaining to dry manure stockpiling (House File 735), to application of manure on snow-covered and frozen ground (Senate File 432, Division I), and to dry bedded confinement feeding operations (Senate File 432, Division II). In addition, the amendments include revisions that reflect current procedures and numerous technical corrections and updates.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 16, 2009, as **ARC 8398B**. Twenty-two oral comments were received at the five public hearings, and 187 written comments were received during the comment period.

As a result of the comments, the following changes have been made to the amendments as published in the Notice of Intended Action:

In Item 2, the definition of "common management" is changed to conform to the definition of that term in the open feedlot statute, Iowa Code chapter 459A; the definition of "confinement feeding operation" is modified to implement the new definition of "partially roofed animal feeding operation" in Item 32, rule 567—65.100(455B,459,459A); and the proposed change to the definition of "residence" was not adopted.

In Item 3, the definition of "liquid manure" is modified to include liquid manure that is frozen or partially frozen.

In Item 7, subparagraph 65.2(10)"a"(1), numbered paragraph "2," the criteria for the base of a long-term, covered stockpile are modified.

In Item 9, subparagraph 65.3(4)"c"(1), language has been added to provide that insufficient manure storage capacity will be accepted as a reason for emergency manure application during the winters of 2010-2011 through 2014-2015; the listing of information required to be submitted to the Department in the notification of emergency manure application in 65.3(4)"d"(1) is altered to include identification of the application fields as listed in the manure management plan; and the language in 65.3(4)"d"(4) indicating that removal of drain tile intake protection prior to completion of snowmelt must be reported as a release has been deleted.

In Item 11, the requirement to use a "certified manure applicator" for land application of manure has been changed to "certified commercial manure service," and language is added pertaining to operations that land-apply their own manure.

In Item 16, paragraph 65.9(1)"f," the terms "NRCS qualified staff" and "licensed professional engineer" are added to the list of individuals who may submit a hydrogeological report on soil corings.

In Items 19 and 20, the word "qualified" is added to references to stockpile structures in the introductory paragraph of rule 567—65.11(459,459A) and subrules 65.11(7), 65.11(8), and 65.12(1) to conform to the statutory terminology; and in Item 19, the separation distances to various types of designated areas in 65.11(8) are corrected to conform to statutory requirements for dry bedded manure stockpiles (this is also corrected for dry manure in Item 37, Table 7).

In Item 21, paragraph 65.15(14)"d," the references for cold and hot weather concreting recommendations are changed from NRCS references to American Concrete Institute references; and for secondary containment barriers in 65.15(17)"b," language requiring accumulated liquids to be tested for nitrogen components has been replaced with language requiring land application in compliance with the operation's manure management plan.

In Item 22, paragraph 65.16(1)"d," the words "and submits" are added to the time frame during which a new owner may apply manure under the most recent previous owner's manure management plan.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

In Item 23, paragraph 65.17(1)“e,” the requirement that the phosphorus index be recalculated assuming frozen ground conditions for emergency manure application has been removed; and in 65.17(17)“b,” language has been added providing a delayed implementation for the change in soil type used in the phosphorus index determination.

In Item 31, the definition of “open feedlot operation” is modified to implement the new definition of “partially roofed animal feeding operation” in Item 32, rule 567—65.100(455B,459,459A).

Finally, throughout the amendments, many references to NRCS engineers and other NRCS staff have been changed to “NRCS qualified staff.”

These amendments are intended to implement Iowa Code chapters 459 and 459A, 2009 Iowa Code Supplement chapter 459B, and 2009 Iowa Code Supplement sections 459.102, 459.204A, 459.204B, 459.205, 459.206, 459.301, 459.307, 459.311, 459.311A, 459.311B, 459.311C, 459.311D, 459.311E, 459.312, 459.313A, 459.313B, 459.314, 459.319 and 459.401.

These amendments shall become effective September 15, 2010.

The following amendments are adopted.

ITEM 1. Amend **567—Chapter 65**, parenthetical implementation statutes for Division I, to read as follows:

(459,459B)

ITEM 2. Amend the following definitions in rule **567—65.1(459,459B)**:

“*Adjacent—air quality*” means, for the purpose of determining separation distance requirements pursuant to 567—65.11(459,459B), that two or more confinement feeding operations are adjacent if they have animal feeding operation structures that are separated at their closest points by less than the following:

1. ~~1,250 feet for confinement feeding operations with animal weight capacity less than 1,250,000 pounds for animals other than bovine, or less than 4,000,000 pounds for bovine~~ for a confinement feeding operation having an animal unit capacity of less than 1,250 animal units for swine maintained as part of a farrowing and gestating operation, less than 2,700 animal units for swine maintained as part of a farrow-to-finish operation, less than 4,000 animal units for cattle maintained as part of a cattle operation, or less than 3,000 animal units for any other confinement feeding operation, or for a confinement feeding operation consisting of dry bedded confinement feeding operation structures.

2. ~~1,500 feet for confinement feeding operations with animal weight capacity from 1,250,000 pounds to less than 2,000,000 pounds for animals other than bovine; from 1,250,000 pounds to less than 2,500,000 pounds for swine in a farrow-to-finish operation; or 4,000,000 pounds to less than 6,000,000 pounds for bovine~~ for a confinement feeding operation having an animal unit capacity of 1,250 or more but less than 2,000 animal units for swine maintained as part of a swine farrowing and gestating operation, 2,700 or more but less than 5,400 animal units for swine maintained as part of a farrow-to-finish operation, 4,000 or more but less than 6,500 animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation having an animal unit capacity of 3,000 or more but less than 5,000 animal units.

3. ~~2,500 feet for confinement feeding operations with animal weight capacity of 2,000,000 or more pounds for animals other than bovine; 2,500,000 or more pounds for swine in a farrow to finish operation; or 6,000,000 or more pounds for bovine~~ for a confinement feeding operation having an animal unit capacity of 2,000 or more animal units for swine maintained as part of a swine farrowing and gestating operation, 5,400 or more animal units for swine maintained as part of a farrow-to-finish operation, or 6,500 or more animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation with 5,000 or more animal units.

4. ~~These~~ The distances in “1” to “3” above shall only be used to determine that two or more confinement feeding operations are adjacent if the at least one animal confinement feeding operation structure is was constructed on or after March 20 21, 1996.

5. To determine if two or more confinement feeding operations are adjacent, for the purpose of determining the separation distance requirements, the animal weight unit capacity of each individual operation shall be used. If two or more confinement feeding operations are do not ~~in~~ have the same

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

animal weight unit capacity category, the greater animal weight unit capacity shall be used to determine the separation distance.

6. Dry manure that is stockpiled within a distance of 1,250 feet from another stockpile shall be considered part of the same stockpile.

“Adjacent—water quality” means, for the purpose of determining whether a permit is required the construction permit requirements pursuant to 567—65.7(459,459B) and manure management plan requirements pursuant to 567—65.16(459,459B), that two or more confinement feeding operations are adjacent if they have animal confinement feeding operation structures that are separated at their closest points by less than the following:

1. 1,250 feet for confinement feeding operations with combined animal weight capacity less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine having a combined animal unit capacity of less than 1,000 animal units.

2. 2,500 feet for confinement feeding operations with combined animal weight capacity of 625,000 or more pounds for animals other than bovine, or 1,600,000 or more pounds for bovine having a combined animal unit capacity of 1,000 or more animal units.

3. These The distances in “1” and “2” above shall only be used to determine that two or more confinement feeding operations are adjacent if the at least one animal confinement feeding operation structure is constructed or expanded on or after May 21, 1998.

“Anaerobic lagoon” means an unformed manure storage structure; if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure’s design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include the following:

1. A runoff control basin which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to areas which are unroofed or partially roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation or a settled open feedlot effluent basin which collects and stores only precipitation-induced runoff from an open feedlot operation.

2. An anaerobic treatment system that includes collection and treatment facilities for all off gases.

“Animal feeding operation” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for an NPDES permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. Chapter 26, as amended, an animal feeding operation does not include a livestock market. Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.

1. For purposes of water quality regulation, Iowa Code section 455B.200B as amended by 2002 Iowa Acts, chapter 1137, section 31 459.301 as amended by 2009 Iowa Acts, House File 735, section 6, provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. For purposes of the air quality-related separation distances in Iowa Code section 455B.162, Iowa Code section 455B.161A as amended by 2002 Iowa Acts, chapter 1137, section 9 459.202, Iowa Code section 459.201 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of animal feeding operations for water quality purposes under the federal Clean Water Act. The Code of Federal Regulations at 40 CFR §122.23 (1995 2008) sets out the requirements for an animal feeding operation and requires that two or more animal feeding operations under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for manure disposal of wastes. However, this federal regulation does not control regulation of animal feeding operations for the purposes of the separation distances in Iowa Code section 455B.162 459.202, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. To determine if two or more animal feeding operations are deemed to be one animal feeding operation, the first test is whether the animal feeding operations are under common ownership or

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

management. If they are not under common ownership or management, they are not one animal feeding operation. For purposes of water quality regulation, the second test is whether the two animal feeding operations are adjacent or utilize a common area or system for manure disposal. If the two operations are not adjacent and do not use a common area or system for manure disposal, they are not one animal feeding operation. For purposes of the separation distances in Iowa Code section ~~455B.162~~ 459.202, the second test is whether the two animal feeding operations are adjacent or utilize a common system for manure storage. If the two operations are not adjacent and do not use the same system for manure storage, they are not one animal feeding operation.

3. A common area or system for manure disposal includes, but is not limited to, use of the same manure storage structure, confinement feeding operation structure, egg washwater storage structure, stockpile, permanent manure transfer piping system or center pivot irrigation system. A common area or system for manure disposal does not include manure application fields included in a manure management plan or anaerobic digesters.

“Animal feeding operation structure” means a confinement building, manure storage structure, dry bedded confinement feeding operation structure, or egg washwater storage structure.

“Animal unit” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

- 1. Slaughter and feeder cattle . . . . . 1.000
- 2. Immature dairy cattle . . . . . 1.000
- 3. Mature dairy cattle . . . . . 1.400
- 4. Butcher or breeding swine weighing more than 55 pounds . . . . . 0.400
- 5. Swine weighing 15 pounds or more but not more than 55 pounds . . . . . 0.100
- 6. Sheep or lambs . . . . . 0.100
- 7. Horses . . . . . 2.000
- 8. Turkeys weighing 7 pounds or more . . . . . 0.018
- 9. Turkeys weighing less than 7 pounds . . . . . 0.0085
- 9 10. Broiler or layer chickens weighing 3 pounds or more . . . . . 0.010
- 11. Broiler or layer chickens weighing less than 3 pounds . . . . . 0.0025

“Animal unit capacity” means a measurement used to determine the maximum number of animal units that may be maintained as part of an animal feeding operation at any one time, including as provided in Iowa Code sections ~~455B.161A as amended by 2002 Iowa Acts, chapter 1137, section 9, and 455B.200B as amended by 2002 Iowa Acts, chapter 1137, sections 3 to 32~~ section 459.201 and section 459.301 as amended by 2009 Iowa Acts, House File 735, section 6. For dry bedded confinement feeding operations, “animal unit capacity” means the maximum number of animal units which the owner or operator confines in a dry bedded confinement feeding operation at any one time, including the animal unit capacity of all dry bedded confinement feeding operation buildings that are used to house cattle or swine in the dry bedded confinement feeding operation.

“Applicant” means the person applying for a construction or operation permit for ~~an animal a~~ confinement feeding operation. ~~The applicant shall be the owner or owners of the animal feeding operation.~~

“Cemetery” means a space held for the purpose of permanent burial, entombment or interment of human remains that is owned or managed by a political subdivision or private entity, or a cemetery regulated pursuant to Iowa Code chapter 523I ~~or 566A~~. A cemetery does not include a pioneer cemetery where there have been six or fewer burials in the preceding ~~fifty~~ 50 years.

“Common management” means significant control by a person of the management of the ~~day to day~~ day-to-day operations of each of two or more animal confinement feeding operations. “Common management” does not include control over a contract livestock facility by a contractor, as defined in Iowa Code section 202.1.

“Confinement feeding operation” means an animal feeding operation in which animals are confined to areas which are totally roofed and includes every animal feeding operation that is not an “open feedlot operation” as defined in ~~567—65.100(455B,459,459A)~~.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*“Construction permit”* means a written approval of the department to construct, modify or alter the use of an animal feeding operation structure as provided in subrule 65.7(1).

*“Designated area”* means a known sinkhole, ~~or a cistern~~, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, lake, or water source. A ~~designated~~ *“Designated area”* does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

*“Document”* means any form required to be processed by the department under this chapter regulating animal feeding operations, including but not limited to applications or related materials for permits as provided in Iowa Code section ~~455B.200A as amended by 2002 Iowa Acts, chapter 1137, sections 28 and 29~~ 459.303, manure management plans as provided in Iowa Code section ~~455B.203 as amended by 2002 Iowa Acts, chapter 1137, sections 38 to 41~~ 459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department’s analysis of the application including using and responding to a master matrix pursuant to ~~2002 Iowa Acts, chapter 1137, section 35~~ Iowa Code section 459.304, and notices required under those sections.

*“Enforcement action”* means an action against a person with a controlling interest in a confinement feeding operation initiated by the department or the attorney general to enforce the provisions of Iowa Code chapter 455B 459 or rules adopted pursuant to the chapter. An enforcement action begins when the ~~department issues an administrative order to the person, when the department notifies a person in writing of intent to recommend referral or the commission refers the action to the attorney general pursuant to Iowa Code section 455B.141 or 455B.191, or when the attorney general institutes proceedings in district court pursuant to Iowa Code section 455B.112, whichever occurs first.~~ An enforcement action is pending until final resolution of the action by ~~satisfaction of an administrative order, rescission or other final resolution of an administrative order or~~ satisfaction of a court order, for which all ~~administrative and~~ judicial appeal rights are exhausted, expired, or waived.

*“Freeboard”* means the difference in elevation between the liquid level and the ~~top of the lowest point of animal confinement feeding operation structure’s berm or the lowest external outlet from a formed manure storage structure.~~ However, for a formed manure storage structure meeting the requirements of 65.15(20), *“freeboard”* means the difference in elevation between the liquid level and the structure’s overflow level.

*“Indemnity fund”* means the manure storage indemnity fund created in Iowa Code section ~~455J.2~~ 459.501.

*“Manure storage structure”* means a formed manure storage structure ~~or~~ an unformed manure storage structure or a dry bedded manure storage structure. A manure storage structure does not include an egg washwater storage structure.

*“Owner”* means the person who has legal or equitable title to the property where the animal confinement feeding operation is located or the person who has legal or equitable title to the animal confinement feeding operation structures. ~~It~~ *“Owner”* does not include a person who has a lease to use the land where the animal confinement feeding operation is located or to use the animal confinement feeding operation structures.

ITEM 3. Adopt the following **new** definitions in rule ~~567—65.1(459,459B)~~:

*“Alluvial aquifer area”* means an area underlaid by sand or gravel aquifers situated beneath flood plains along stream valleys and includes alluvial deposits associated with stream terraces and benches, contiguous wind-blown sand deposits, and glacial outwash deposits.

*“Alluvial soils”* means soils formed in materials deposited by moving water.

*“Bedding”* means crop, vegetation, or forage residue or similar materials placed in a dry bedded confinement building for the care of animals.

*“Construction approval letter”* means a written document of the department to acknowledge that the preconstruction submittal requirements of ~~567—65.9(459,459B)~~ have been met for a confinement feeding operation that is not required to obtain a construction permit pursuant to ~~567—65.7(459,459B)~~.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

“*Construction design statement*” means a document required to be submitted by a confinement feeding operation prior to constructing a formed manure storage structure, other than a small animal feeding operation, but that does not meet the threshold engineering requirements pursuant to 567—65.1(459,459B).

“*Dry bedded confinement feeding operation*” means a confinement feeding operation in which cattle or swine are confined to areas which are totally roofed and in which all manure is stored as dry bedded manure. Unless specifically stated otherwise, all requirements in Division I of 567—Chapter 65 do apply to dry bedded confinement feeding operations.

“*Dry bedded confinement feeding operation structure*” means a dry bedded confinement feeding operation building or a dry bedded manure storage structure.

“*Dry bedded manure*” means manure from cattle or swine that meets all of the following requirements:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The manure contains bedding.

“*Dry bedded manure confinement feeding operation building*” or “*building*” means a building used in conjunction with a confinement feeding operation to house cattle or swine and in which any manure from the animals is stored as dry bedded manure.

“*Dry bedded manure storage structure*” means a covered or uncovered structure, other than a building, used to store dry bedded manure originating from a confinement feeding operation.

“*Dry manure*” means manure which meets all of the following conditions:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the manure do not flow freely among themselves but may show a tendency to separate under stress.

“*Dry manure*” includes manure marketed as a bulk dry animal nutrient product that is stored 1,250 feet or less from the confinement animal feeding structure from which it originated.

“*Frozen ground*” means soil that is impenetrable due to frozen soil moisture but does not include soil that is only frozen to a depth of two inches or less.

“*Liquid manure*” means manure that meets all of the following requirements:

1. The manure flows perceptibly under pressure.
2. The manure is capable of being transported through a mechanical pumping device designated to move a liquid.
3. The constituent molecules of the liquid manure flow freely among themselves and show a tendency to separate under stress.

Liquid manure that is frozen or partially frozen is included in this definition.

“*Long-term stockpile location*” means an area where a person stockpiles manure for more than a total of six months in any two-year period.

“*Qualified stockpile cover*” means a barrier impermeable to precipitation that is used to protect a stockpile from precipitation.

“*Qualified stockpile structure*” means a building or roofed structure that is all of the following:

1. Impermeable to precipitation.
2. Constructed using wood, steel, aluminum, vinyl, plastic, or other similar materials.
3. Constructed with walls or other means to prevent precipitation-induced surface runoff from contacting the stockpile.

“*Snow-covered ground*” means soil covered by one inch or more of snow or soil covered by one-half inch or more of ice.

“*Stockpile*” means dry manure or dry bedded manure originating from a confinement feeding operation that is stored at a particular location outside a confinement feeding operation building or a manure storage structure.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

“*Stockpile dry bedded manure*” means to store dry bedded manure outside a dry bedded manure confinement feeding operation building or a dry bedded manure storage structure.

“*Stockpile dry manure*” means to create or add to a dry manure stockpile.

“*Surface water drain tile intake*” means an opening to a drain tile, including intake pipes and French drains, which allows surface water to enter the drain tile without filtration through the soil profile.

“*Threshold requirements for an engineer*” means the limits, pursuant to Iowa Code section 459.303, which require that the design of a formed manure storage structure or egg washwater storage structure be prepared and signed by a professional engineer licensed in the state of Iowa or by an engineer working for the USDA Natural Resources Conservation Service (NRCS). A confinement feeding operation that utilizes a formed manure storage structure meets threshold requirements for an engineer if any of the following applies:

1. A confinement feeding operation with an animal unit capacity of 1,250 or more animal units for swine maintained as part of a swine farrowing and gestating operation.
2. A confinement feeding operation with an animal unit capacity of 2,750 or more animal units for swine maintained as part of a swine farrow-to-finish operation.
3. A confinement feeding operation with an animal unit capacity of 4,000 or more animal units for cattle maintained as part of a cattle operation.
4. Any other confinement feeding operation with an animal unit capacity of 3,000 or more animal units.

“*Water well*” means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. “Water well” does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

ITEM 4. Rescind the definitions of “Family,” “Family farm member,” “Nonpublic water supply,” “Primary highway,” “Substantial improvements,” “Substantial labor” and “Watercourse” in rule **567—65.1(459,459B)**.

ITEM 5. Amend rule 567—65.2(459,459B), introductory paragraph, as follows:

**567—65.2(459,459B) Minimum manure control requirements and reporting of releases.** ~~Water pollution control facilities~~ Confinement feeding operations shall be constructed, managed and maintained to meet the minimum manure control requirements stated in subrules 65.2(1) to 65.2(8) of this rule. A release shall be reported to the department as provided in subrule 65.2(9) of this rule. Dry manure stockpiling requirements are stated in subrule 65.2(10). Dry bedded manure stockpiling requirements are stated in 65.2(11).

ITEM 6. Amend subrule 65.2(3) as follows:

**65.2(3)** The minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application and as specified in this rule. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state.

*a.* Control of manure from confinement feeding operations may be accomplished through use of manure storage structures or other manure control methods. Sufficient capacity shall be provided in the manure storage structure to store all manure between periods of manure application. A confinement feeding operation, other than a small animal feeding operation, that is constructed or expanded on or after July 1, 2009, shall not surface-apply liquid manure on frozen or snow-covered ground when there is an emergency, as described in subrule 65.3(4), unless the operation has a minimum of 180 days of manure storage capacity. Additional capacity shall be provided if precipitation, manure or wastes from other sources can enter the manure storage structure.

*b.* Manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Manure stored in unformed manure storage structures or ~~earthen waste slurry storage basins~~ unformed egg washwater storage structures shall be removed

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

from the structures as necessary to maintain a minimum of two feet of freeboard in the structure, unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. Manure stored in unroofed formed manure storage structures or formed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of one foot of freeboard in the structure unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow.

*c.* No change.

*d.* Dry manure or dry bedded manure originating at a confinement feeding operation may be retained as a stockpile so long as the stockpiled dry manure or dry bedded manure meets the following:

(1) Dry manure stockpiling requirements provided in subrule 65.2(10) or dry bedded manure stockpiling requirements provided in subrule 65.2(11).

(2) Applicable NPDES requirements pursuant to the federal Water Pollution Control Act, 33 U.S.C. Ch. 26, and 40 CFR Pts. 122 and 412.

(3) The dry manure or dry bedded manure is removed from the stockpile and applied in accordance with 567—65.3(459,459B) within six months after the dry manure or dry bedded manure is first stockpiled.

(4) Dry manure stockpiles are not required to meet the requirements in subparagraphs (1) to (3) above if the dry manure originates from a confinement feeding operation that was constructed prior to January 1, 2006, unless any of the following apply:

1. The confinement feeding operation is expanded after January 1, 2006.

2. Dry manure is stockpiled in violation of subrule 65.2(3).

3. Precipitation-induced runoff from the stockpile has drained off the property.

ITEM 7. Adopt the following **new** subrules 65.2(10) and 65.2(11):

**65.2(10)** Dry manure stockpiling requirements for a confinement feeding operation.

*a. Requirements for terrain, other than karst terrain.* Dry manure stockpiled on terrain, other than karst terrain, for more than 15 consecutive days shall comply with either of the following:

(1) Dry manure shall be stockpiled using any of the following:

1. A qualified stockpile structure; or

2. A qualified stockpile cover. Long-term stockpiles utilizing a qualified stockpile cover shall be placed on a constructed impervious base that can support the load of the equipment used under all weather conditions. The coefficient of permeability of the impervious base shall be less than  $1 \times 10^{-7}$  cm/sec (0.00028 feet/day). Permeability results shall be submitted to the department prior to use of the stockpile site.

(2) A stockpile inspection statement shall be delivered to the department as follows:

1. The department must receive the statement by the fifteenth day of each month.

2. The stockpile inspection statement shall provide the location of the stockpile and document the results of an inspection conducted during the previous month. The inspection must evaluate whether precipitation-induced runoff is draining away from the stockpile and, if so, describe actions taken to prevent the runoff. If an inspection by the department documents that precipitation-induced runoff is draining away from a stockpile, the dry manure must be immediately removed from the stockpile or comply with all directives of the department to prevent the runoff.

3. The stockpile inspection statement must be in writing and may be on a form prescribed by the department.

*b. Requirements for karst terrain.* Dry manure stockpiled on karst terrain or an area that drains into a known sinkhole shall comply with all of the following:

(1) A minimum 5-foot layer of low permeability soil or rock between the bottom of the stockpile and underlying limestone, dolomite or other soluble rock is required. A professional engineer licensed in Iowa, NRCS qualified staff or a qualified organization shall submit a soil report, based on the results from soil borings or test pits or representative well data, describing the subsurface materials and vertical separation distance from the proposed bottom of the stockpile and the underlying limestone, dolomite or soluble rock. A minimum of two soil borings or test pits at each end of the proposed stockpile site are

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

required if acceptable well data are not available. After soil exploration is complete, each boring or test pit shall be properly plugged with concrete grout, bentonite or similar materials and that action shall be documented in the soil report.

(2) Dry manure stockpiled for more than 15 consecutive days shall use any of the following:

1. A qualified stockpile structure; or

2. A qualified stockpile cover. Long-term stockpiles utilizing a qualified stockpile cover shall be placed on a reinforced concrete slab at least 5 inches thick conforming to the requirements of 65.15(14)“a”(2), numbered paragraphs “1,” “3,” “4,” “6,” “8” and “12.”

*c. Dry manure stockpile siting prohibitions.*

(1) Grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway.

(2) Sloping land. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to silt fences, temporary earthen berms, or other effective measures, and that prevent or diminish precipitation-induced runoff from the stockpile.

**65.2(11)** Dry bedded manure stockpiling requirements for a dry bedded confinement feeding operation.

*a. Prohibitions and siting restrictions.*

(1) Prohibition in a grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway, where water pools on the soil surface, or in any location where surface water will enter the stockpile.

(2) Siting restrictions. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure or dry bedded manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures that prevent or diminish precipitation-induced runoff from the stockpile.

*b. Requirements for karst terrain or alluvial aquifer areas.* Dry bedded manure stockpiled on karst terrain or an alluvial aquifer area shall comply with all of the following:

(1) A minimum 5-foot layer of low permeability soil or rock between the bottom of the stockpile and underlying limestone, dolomite or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area is required. A professional engineer licensed in Iowa, NRCS qualified staff or a qualified organization shall submit a soil report, based on the results from soil borings or test pits, determining the vertical separation distance from the proposed bottom of the stockpile and the underlying limestone, dolomite or soluble rock. A minimum of two soil borings or test pits at each end of the proposed site are required if acceptable well data are not available. After soil exploration is complete, each boring or test pit shall be properly plugged with concrete grout, bentonite or similar materials and that action shall be documented in the soil report.

(2) Stockpiles shall be placed on a reinforced concrete slab that is a minimum of 5 inches thick conforming to the requirements of 65.15(14)“a”(2), numbered paragraphs “1,” “3,” “4,” “6,” “8” and “12.”

ITEM 8. Amend paragraph **65.3(3)“a”** as follows:

*a.* For liquid manure from a confinement feeding operation, the required separation distance from a residence not owned by the titleholder of the land, a business, a church, a school, or a public use area is 750 feet, as specified in Iowa Code section ~~455B.162~~ 459.204. The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school, or public use area.

ITEM 9. Adopt the following **new** subrule 65.3(4):

**65.3(4)** *Surface application of liquid manure on frozen or snow-covered ground.* A person who applies liquid manure on frozen or snow-covered ground shall comply with applicable NPDES requirements pursuant to the federal Water Pollution Control Act, 33 U.S.C. Chapter 26, and 40 CFR Parts 122 and 412, and also shall comply with the following requirements:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*a. Snow-covered ground.* During the period beginning December 21 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on snow-covered ground only when there is an emergency.

*b. Frozen ground.* During the period beginning February 1 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on frozen ground only when there is an emergency.

*c. What constitutes an emergency.* For the purposes of this subrule, an emergency application is only allowed when there is an immediate need to apply manure to comply with the manure retention requirement of subrule 65.2(3) due to unforeseen circumstances affecting the storage of the liquid manure. The unforeseen circumstances must be beyond the control of the owner of the confinement feeding operation, including but not limited to natural disaster, unusual weather conditions, or equipment or structural failure. The authorization to apply liquid manure pursuant to this subrule does not apply to either of the following:

(1) An immediate need to apply manure in order to comply with the manure retention requirement of subrule 65.2(3) caused by the improper design or management of the manure storage structure, including but not limited to a failure to properly account for the volume of the manure to be stored. Based on the restrictions described in paragraphs 65.3(4)“a” and “b” and the possibility that the ground could be snow-covered and frozen for the entire period of December 21 to April 1, an operation should not plan to apply liquid manure during that time period. Confinement feeding operations without alternatives to manure application must have sufficient storage capacity to retain manure generated from December 21 to April 1 under normal circumstances in order to properly account for the volume of manure to be stored. For the winters of 2010-2011 through 2014-2015 only, the department will accept insufficient manure storage capacity as a reason for emergency application in the notification required in 65.3(4)“d”(1).

(2) Liquid manure originating from a confinement feeding operation constructed or expanded on or after July 1, 2009, if the confinement feeding operation has a capacity to store manure for less than 180 days.

*d. Procedure for emergency application.* A person who is authorized to apply liquid manure on snow-covered ground or frozen ground when there is an emergency shall comply with all of the following:

(1) The person must notify the appropriate department field office by telephone prior to the application. The department will not consider the notification complete unless the owner’s name, facility name, facility ID number, reason for emergency application, application date, estimated number of gallons of manure to be applied, and the application fields as listed in the manure management plan are given. In cases where the emergency is not easily confirmed by weather reports, the owner must make documentation of the emergency available to the field office upon request.

(2) The liquid manure must be applied on land identified for such application in the current manure management plan maintained by the owner of the confinement feeding operation as required in subrule 65.17(12). The land must be identified in the current manure management plan prior to the application, and that change must also be reflected in the next annual update or complete manure management plan submitted to the department and county boards of supervisors following the application as required in paragraph 65.16(3)“b.”

(3) The liquid manure must be applied on a field with a phosphorus index rating of 2 or less.

(4) Any surface water drain tile intake that is on land in the owner’s manure management plan and located downgradient of the application must be temporarily blocked beginning not later than the time that the liquid manure is first applied and ending not earlier than two weeks after the completion of the application.

(5) Additional measures to contain runoff may be necessary in order to prevent violation of federal effluent standards in 567—subrule 62.4(12).

*e. Exceptions.* Paragraphs 65.3(4)“a” through “d” do not apply to any of the following:

(1) The application of liquid manure originating from a small animal feeding operation.

(2) The application of liquid manure injected or incorporated into the soil on the same date.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 10. Amend subrule 65.3(4) as follows:

~~65.3(4)~~ **65.3(5)** *Recommended practices.* Except as required by rule in this chapter, the following practices are recommended:

a. and b. No change.

c. ~~Manure application on frozen or snow-covered cropland.~~ Application of dry or liquid manure on frozen or snow-covered cropland should be avoided where possible. If manure application must take place in the winter time, the following are guidelines to minimize runoff and subsequent loss of nutrients. If manure is spread on frozen or snow-covered cropland, application should be limited to areas on which:

~~(1) Land slopes are 4 percent or less, or~~

~~(2) Adequate erosion control practices exist. Adequate erosion control practices may include such practices as terraces, conservation tillage, cover crops, contour farming or similar practices.~~

(1) Apply manure to areas where land slopes are 4 percent or less or where control practices are sufficient to prevent runoff from reaching surface water or groundwater during winter.

(2) If applying manure on a terraced field or sloping field, avoid application to areas that drain to tile intakes that directly discharge to surface water or groundwater.

(3) Do not apply manure in grassed waterways.

(4) Apply manure early in winter prior to significant snowfall.

(5) Avoid application near tile intakes, ditches, gullies, areas of concentrated flow, creeks, streams, lakes, and other surface water.

(6) Avoid application near water wells, sinkholes, losing streams, areas with shallow bedrock, agricultural drainage wells, or other pathways to groundwater.

(7) Do not apply manure on top of deeper snow cover, especially in late winter.

(8) Applying manure on soybean stubble where less snow is captured is preferable to applying manure on standing cornstalks.

(9) In late winter, wait until the snow has melted before applying manure.

(10) Avoid application during active runoff events or when rainfall, snow, or warming conditions are predicted that could cause snowmelt or runoff.

(11) Fields and tiles should be observed during snowmelt and runoff events to identify and remediate any runoff that may occur. If discolored or odorous water is being discharged, immediate efforts should be taken to prevent the water from reaching surface water or groundwater and changes should be made to prevent the discharge from recurring. Sampling and analysis of runoff for nitrogen and phosphorus may be used to better evaluate management practices in order to avoid wasting valuable nutrients or causing water quality violations.

d. to f. No change.

ITEM 11. Adopt the following **new** subrule 65.3(6):

**65.3(6)** *Certified manure applicator.* A confinement feeding operation that is required to submit a manure management plan to the department pursuant to rule 567—65.16(459,459B) must use a certified commercial manure service for land application of manure as provided in rule 567—65.19(459,459B). An operation subject to this subrule that applies its own manure must comply with certification requirements in rule 567—65.19(459,459B) pertaining to confinement site manure applicators.

ITEM 12. Amend rule 567—65.7(459,459B) as follows:

**567—65.7(459,459B) Construction permits—required approvals, permits, determinations and declaratory orders.** A person required to obtain a construction permit pursuant to subrule 65.7(1) or a construction approval letter pursuant to subrule 65.7(7) shall not begin construction, expansion or modification of a confinement feeding operation structure until the department issues a construction permit or a construction approval letter, as defined in 567—65.1(459,459B), for a proposed or existing confinement feeding operation. In addition, the owner of a small animal feeding operation with formed manure storage structures who is not required to obtain a construction permit pursuant to subrule

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

65.7(1) or a construction approval letter pursuant to subrule 65.7(7) shall comply with the applicable construction approval requirements pursuant to subrule 65.7(8).

**65.7(1) ~~Animal~~ Confinement feeding operations required to obtain a construction permit.**

a. No change.

b. Except as provided in subrule 65.7(2), a confinement feeding operation shall obtain a construction permit prior to any of the following:

(1) Constructing or modifying any unformed manure storage structure, or constructing, installing or modifying a confinement building that uses an unformed manure storage structure.

(2) to (8) No change.

(9) Initiating a remedial change, upgrade, replacement or construction when directed by the department as a result of departmental evaluation pursuant to paragraph 65.5(2) "b" or as required by an administrative order or court order pursuant to Iowa Code section 455B.112 or 455B.175.

Repairs to a confinement building or additions such as fans, slats, gates, roofs, or covers do not require a construction permit. In some instances, the department may determine that a construction permit is not required to increase the volume of manure or egg washwater or a modification in the manner in which manure or egg washwater is stored if the increase or modification is deemed insignificant. Plans for repairs or modifications to a manure storage structure shall be submitted to the department to determine if a permit is required.

**65.7(2) ~~Animal~~ Confinement feeding operations not required to obtain a construction permit.**

a. A construction permit shall not be required for ~~an animal feeding operation structure used~~ a formed manure storage structure or for a confinement building that uses a formed manure storage structure in conjunction with a small animal feeding operation. However, this paragraph shall not apply to a small animal feeding operation that uses an unformed manure storage structure.

b. A construction permit shall not be required for ~~an animal~~ a confinement feeding operation structure related to research activities and experiments performed under the authority and regulations of a research college.

c. A construction permit is not required to construct a formed manure storage structure at a confinement feeding operation having an animal unit capacity of more than 500 but less than 1,000 animal units; however, a construction approval letter is required from the department pursuant to subrule 65.7(8) and 567—65.9(459,459B).

**65.7(3) Operations that shall not be issued construction permits.**

a. No change.

b. The department shall not issue a construction permit to a person for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code ~~section 455B.191~~ sections 459.317 and 459.604.

c. The department shall not issue a construction permit to expand or modify a confinement feeding operation for ~~one year~~ 120 days after completion of the last construction or modification at the operation, if a permit was not required for the last construction or modification. ~~The department, upon good cause demonstrated by the applicant, shall grant a waiver to this rule.~~

d. No change.

**65.7(4) ~~Plan~~ Construction permit application plan review criteria.** Review of plans and specifications submitted with a construction permit application shall be conducted to determine the potential of the proposed manure control system to achieve the level of manure control being required of the ~~animal~~ confinement feeding operation. In conducting this review, applicable criteria contained in federal law, state law, these rules, Natural Resources Conservation Service design standards and specifications unless inconsistent with federal or state law or these rules, and U.S. Department of Commerce precipitation data shall be used. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

**65.7(5) and 65.7(6)** No change.

**65.7(7) ~~Permit prior to construction~~ Confinement feeding operations required to obtain a construction approval letter.** ~~An applicant for a construction permit shall not begin construction at the~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

location of a site planned for the construction of an animal feeding operation structure, including an aerobic structure, until the person has been granted a permit for the construction of the structure by the department. A person planning to construct a confinement feeding operation, other than a small animal feeding operation as defined in rule 567—65.1(459,459B) or other than an operation required to obtain a construction permit pursuant to subrule 65.7(1), shall obtain from the department a construction approval letter as provided in subrule 65.9(3) prior to beginning construction of a formed manure storage structure. The construction approval letter shall expire if construction, as defined in subrule 65.8(1), is not begun within one year and completed within four years of the date of the construction approval letter.

**65.7(8) *Small animal feeding operations.*** The following requirements apply to small animal feeding operations, notwithstanding construction permit exemptions in subrule 65.7(2) and limited separation distance exemptions in rule 567—65.12(459,459B):

a. A person shall not begin construction of a confinement feeding operation structure located on alluvial soil until the department issues a declaratory order pursuant to subrule 65.7(9) that the proposed location is not in the one hundred year flood plain.

b. A person shall not construct a confinement feeding operation structure on a flood plain as provided in rule 567—71.13(455B) until the department issues a flood plain development permit pursuant to 567—Chapters 70 to 76.

c. Confinement feeding operation structures must comply with applicable separation distance requirements in rule 567—65.11(459,459B) and the applicable manure storage structure design requirements in rule 567—65.15(459,459B).

**65.7(9) *Declaratory orders and flood plain determinations.*** If the location of any proposed confinement feeding operation structure contains soils classified as alluvial determined pursuant to subrule 65.9(4), the owner shall petition the department for a declaratory order or a determination that the confinement feeding operation structure is not in the one hundred year flood plain. To be considered complete, the petition shall include all information necessary, pursuant to 567—Chapters 70 to 76, for the department to determine: (1) if the confinement feeding operation is proposed to be located on a one hundred year flood plain; (2) if a flood plain development permit for the operation is required; and (3) if a flood plain development permit may be issued if one is required. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry. The petition for a declaratory order or determination shall be submitted to the department according to either of the following:

a. If the person is not required to apply for a construction permit pursuant to subrule 65.7(1), the person must petition the department for a declaratory order pursuant to Iowa Code section 17A.9 and 561—Chapter 6. The department shall issue a declaratory order in response to a complete petition, notwithstanding any other provision provided in Iowa Code section 17A.9 to the contrary, within 30 days from the date that the complete petition is filed with the department. The declaratory order shall state whether or not the proposed location is on the one hundred year flood plain. If the proposed location of the confinement feeding operation structure is on the one hundred year flood plain, the department shall prohibit the construction. Exception to this subrule is provided in Iowa Code section 459.310, subsection 4. Even if the proposed location of the confinement feeding operation structure is not on the one hundred year flood plain, the department may require a flood plain development permit pursuant to 567—Chapters 70 to 76.

b. If the person is required to apply for a construction permit pursuant to subrule 65.7(1), the person must petition the department for a determination. The department shall determine if the confinement feeding operation structure is proposed to be located on the one hundred year flood plain. If the proposed location of the confinement feeding operation structure is on the one hundred year flood plain, the department shall disapprove the construction permit. Exception to this subrule is provided in Iowa Code section 459.310, subsection 4. Even if the department makes a determination that the proposed location of the confinement feeding operation structure is not on the one hundred year flood plain, the department may require a flood plain development permit pursuant to 567—Chapters 70 to 76.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**65.7(10) Compliance with permit conditions.** A person who constructs, modifies or expands a confinement feeding operation structure pursuant to a construction permit shall comply with all terms and conditions of the construction permit.

ITEM 13. Amend paragraph **65.8(1)“c”** as follows:

c. Installation of piping for movement of manure within, from or between ~~animal~~ confinement feeding operation structures.

ITEM 14. Amend paragraphs **65.8(3)“b,” “d”** and **“e”** as follows:

b. A person shall not construct or expand ~~an animal feeding operation structure which is part of a~~ confinement feeding operation structure for five years after the date of the last violation committed by a person or a confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code ~~section 455B.191~~ sections 459.317 and 459.604.

d. A confinement feeding operation structure shall not be constructed on the one hundred year flood plain. Placing fill material on flood plain land to elevate the land above the one hundred year flood level will not be considered as removing the land from the one hundred year flood plain for the purpose of this paragraph. In addition, a person shall not construct a confinement feeding operation structure on a flood plain as provided in ~~567—71.13(455B)~~ until the department issues a flood plain development permit pursuant to 567—Chapters 70 to 76.

e. A person shall not construct a confinement feeding operation structure on land that contains alluvial soils, according to the Soil Survey published by the Natural Resources Conservation Service of the United States Department of Agriculture, and determined according to subrule 65.9(4), unless the person has received a declaratory order or a determination from the department of natural resources that the proposed location of the structure is not on the one hundred year flood plain. ~~The declaratory order or determination may be obtained as follows:~~ pursuant to subrule 65.7(9).

~~(1) If the person does not apply for a construction permit as provided in Iowa Code section 459.303 and rule 567—65.9(455B), the person must petition the department for a declaratory order pursuant to Iowa Code section 17A.9 and 561—Chapter 6 to determine whether the location of the proposed confinement feeding operation structure is on the one hundred year flood plain. The person is strongly encouraged to contact the department prior to submitting the petition to determine the nature and extent of information required for the petition to be considered complete. To be considered complete, the petition must include all information pursuant to 567—Chapters 70 to 76 necessary to determine if the confinement feeding operation structure is proposed to be located on a one hundred year flood plain. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry. The department shall issue a declaratory order in response to a complete petition, notwithstanding any other provision provided in Iowa Code section 17A.9 to the contrary, within 30 days from the date that the complete petition is filed with the department. The declaratory order shall state whether or not the proposed location is on the one hundred year flood plain.~~

~~(2) If the person does apply for a construction permit as provided in Iowa Code section 459.303, the person must identify in the application whether or not the land contains alluvial soils. The department shall determine if the confinement feeding operation structure is proposed to be located on the one hundred year flood plain. If the proposed location of the confinement feeding operation structure is on the one hundred year flood plain, the department shall disapprove the construction permit. In the event that the proposed location of the confinement feeding operation structure is not on the one hundred year flood plain, the department may issue a construction permit as provided in Iowa Code section 459.303 and rule 567—65.9(455B) if all other applicable criteria are satisfied.~~

ITEM 15. Adopt the following **new** paragraph **65.8(3)“f”**:

f. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as specified in Iowa Code sections 459.310 and 460.205.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 16. Amend rule 567—65.9(459,459B) as follows:

**567—65.9(459,459B) Construction—permit—application Preconstruction submittal requirements.** Prior to beginning construction, expansion or modification of a confinement feeding operation structure, a person shall obtain from the department a construction permit pursuant to subrule 65.7(1), a construction approval letter pursuant to subrule 65.7(7) or approval of a secondary containment barrier design pursuant to subrule 65.9(8), according to procedures established in this rule:

**65.9(1) ~~Confinement feeding operations~~ Construction permit application.** Application for a construction permit for a confinement feeding operation shall be made on a form provided by the department. The application shall include all of the information required in the form and should be submitted to the department at least 120 days prior to the date the proposed construction is scheduled to begin. At the time the department receives a complete application, the department shall make a determination regarding the approval or denial of the permit within 60 days in accordance with subrule 65.10(5). ~~However, the 60-day requirement shall not apply to an application if the applicant is not required to obtain a permit.~~ A construction permit application for a confinement feeding operation shall be filed as instructed on the form and shall include at least the following:

a. ~~The owner name of the applicant~~ and the name of the confinement feeding operation, including mailing address and telephone number.

b. and c. No change.

d. Whether the application is for the expansion of an existing operation or the construction of a proposed confinement feeding operation, and the date when it was first constructed if an existing operation.

e. The animal unit capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation. If the confinement feeding operation includes a confinement feeding operation structure that was constructed prior to March 1, 2003, the animal weight capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation shall also be included.

f. ~~For a manure storage structure in which manure is stored in a liquid or semiliquid form or for an egg washwater storage structure,~~ Engineering documents. A confinement feeding operation that utilizes an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure at an operation that meets the threshold requirements for an engineer as defined in 567—65.1(459,459B) shall include an engineering report, construction plans and specifications, prepared. The engineering report, construction plans and specifications must be prepared and signed by a licensed professional engineer or by a USDA Natural Resources Conservation Service (NRCS) personnel, that qualified staff person, must detail the proposed structures, and must include a statement certifying that the manure storage structure complies with the requirements of Iowa Code chapter 459. In addition, a qualified soils or groundwater professional, licensed professional engineer or NRCS qualified staff shall submit a hydrogeologic report on soil corings in the area of the unformed manure storage structure or egg washwater storage structure as described in subrules 65.15(6) to 65.15(13).

g. ~~A report on soil corings in the area of the aerobic structure, anaerobic lagoon, egg washwater storage structure, or manure storage basin, as described in subrule 65.17(6), if an earthen lagoon, structure or basin is being constructed.~~ Construction design statement or professional engineer design certification. A confinement feeding operation that uses a formed manure storage structure and that is below the threshold requirements for an engineer as defined in 567—65.1(459,459B) shall submit a construction design statement pursuant to subrule 65.9(6) or a professional engineer design certification pursuant to subrule 65.9(7).

h. ~~Payment to the department of the indemnity fund fee as required in Iowa Code section 455J.3 459.502.~~

i. ~~If the confinement feeding operation contains~~ construction permit application is for three or more animal confinement feeding operation structures, a drainage tile certification shall be submitted as follows:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(1) If the application is for an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure that meets the threshold requirements for an engineer as defined in 567—65.1(459,459B), a licensed professional engineer shall certify that either the construction of the structure will not impede the drainage through established drainage tile lines which cross property boundary lines or that if the drainage is impeded during construction, the drainage tile will be rerouted to reestablish the drainage prior to operation of the structure.

(2) If the application is for a formed manure storage structure that does not meet the threshold engineering requirements, a drainage tile certification shall be submitted as part of the construction design statement pursuant to subrule 65.9(6) or as part of the professional engineer design certification pursuant to subrule 65.9(7).

j. Information (e.g., maps, drawings, aerial photos) that clearly shows the proposed location of the animal confinement feeding operation structures, any existing confinement feeding operation structures, any locations or objects from which a separation distance is required by Iowa Code sections 455B.162 and 455B.204 459.202, 459.203 and 459.310, and that the structures will meet all applicable separation distances. For an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure that meets the threshold requirements for an engineer as defined in 567—65.1(459,459B), the maps, drawings or aerial photos must be signed by a professional engineer licensed in Iowa or be prepared by NRCS qualified staff. If applicable, a copy of a recorded separation distance waiver, pursuant to paragraph 65.12(1) “b,” must be included with the application. Also, if applicable, a secondary containment barrier design, pursuant to subrules 65.9(8) and 65.12(7), shall be included.

k. No change.

l. Documentation that a copy Copies of the permit application and manure management plan has been provided to the county board of supervisors or county auditor in the county where the operation or structure subject to the permit is to be located, and documentation of the date received by the county pursuant to 567—65.16(459,459B).

m. A fee of \$500, consisting of a construction permit application fee of \$250 and, if applicable, the manure management plan filing fee of \$250 as required in 65.16(6) subrule 65.16(7).

n. No change.

o. Information necessary for the department to determine: (1) if the confinement feeding operation is proposed to be located on a one hundred year flood plain; (2) if a flood plain development permit for the operation is required; and (3) if a flood plain development permit may be issued if one is required, pursuant to 567—Chapters 70 to 76. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry. Soil information indicating whether the proposed location contains soils classified as alluvial, pursuant to subrule 65.9(4). If the proposed location contains soils classified as alluvial, a copy of the department’s determination that the proposed location is not in a one hundred year flood plain, and a flood plain development permit pursuant to 567—Chapters 70 to 76, if required, shall be included.

p. A copy of any master matrix evaluation provided to the county.

q. Information indicating whether the proposed location is in karst terrain pursuant to subrule 65.9(5). If the proposed location is in karst terrain, a soils exploration study or a statement from qualified department staff that a soils exploration study is not needed shall be included.

r. A livestock odor mitigation evaluation certificate issued by Iowa State University as provided in Iowa Code section 266.49. The applicant is not required to submit the certificate if any of the following apply:

(1) The confinement feeding operation is twice the minimum separation distance required from the nearest object or location from which a separation distance is required pursuant to Iowa Code section 459.202 on the date of the application, not including a public thoroughfare.

(2) The owner of each object or location which is less than twice the minimum separation distance required pursuant to Iowa Code section 459.202 from the confinement feeding operation on the date of the application, other than a public thoroughfare, executes a document consenting to the construction.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(3) The applicant submits a document swearing that Iowa State University has failed to furnish a certificate to the applicant within 45 days after the applicant requested the University to conduct a livestock odor mitigation evaluation as provided in Iowa Code section 266.49.

(4) The application is for a permit to expand a confinement feeding operation, if the confinement feeding operation was first constructed before January 1, 2009.

(5) Iowa State University does not provide for a livestock odor mitigation evaluation effort as provided in Iowa Code section 266.49, for any reason, including because funding is not available.

s. Documentation that copies of all the construction permit application documents have been provided to the county board of supervisors or county auditor in the county where the operation or structure subject to the permit is to be located, and documentation of the date received by the county.

**65.9(2)** No change.

**65.9(3)** *Construction approval letter:* A confinement feeding operation that, pursuant to subrule 65.7(7), is required to obtain a construction approval letter as defined in 567—65.1(459,459B), but that is not required to obtain a construction permit pursuant to subrule 65.7(1), shall file with the department, at least 30 days prior to the date the proposed construction is scheduled to begin, all of the following:

a. A construction design statement pursuant to subrule 65.9(6). In lieu of a construction design statement, a professional engineer design certification pursuant to subrule 65.9(7) may be submitted.

b. The results of the alluvial soils information pursuant to subrule 65.9(4) or a copy of the department's declaratory order that the location is not in the one hundred year flood plain pursuant to paragraph 65.8(3)"e" and a copy of the department's flood plain development permit pursuant to 567—Chapters 70 to 76, if required.

c. The results of the karst terrain determination pursuant to subrule 65.9(5).

d. A copy of the manure management plan pursuant to 567—65.16(459,459B).

e. Information (e.g., maps, drawings, aerial photos) that clearly shows the intended location of the confinement feeding operation structures and animal weight capacities of any other confinement feeding operations within a distance of 2,500 feet in which the owner has an ownership interest or which the owner manages.

f. A fee of \$250 for filing a manure management plan pursuant to subrule 65.16(7) and a manure storage indemnity fee pursuant to subrule 65.16(6).

g. Documentation that the board of supervisors or auditor of the county where the confinement feeding operation structure is proposed to be located received a copy of the manure management plan.

**65.9(4)** *Alluvial soils submittal requirements.* Prior to beginning construction or expansion of a confinement feeding operation, the person planning the construction shall determine whether the proposed confinement feeding operation structure will be located in soils classified as alluvial as defined in 567—65.1(459,459B) and pursuant to paragraph 65.8(3)"e." The alluvial soils determination shall be obtained by using the AFO Siting Atlas located at the department's official Web site or by consulting a qualified department staff person, a soils professional normally engaged in the practice of soil investigation, or NRCS qualified staff. The alluvial soils determination shall be submitted to the department according to the following:

a. If the proposed location is not in alluvial soils, the person planning the construction shall submit a printed map from the AFO Siting Atlas clearly showing the location of each proposed confinement feeding operation structure or a written statement from qualified department staff, a soils professional normally engaged in the practice of soil investigation or NRCS qualified staff, with the construction permit application documents as required in subrule 65.9(1) or with the construction design statement as required in subrule 65.9(3) if a construction permit is not required.

b. If the proposed location is in alluvial soils, the person planning the construction shall petition the department for a declaratory order or a determination according to procedures required in subrule 65.7(9). It is recommended that the person planning the construction consult with qualified department staff before petitioning for a declaratory order or a determination. The department's determination indicating that the location is not in the one hundred year flood plain and a copy of the department's flood plain development permit pursuant to 567—Chapters 70 to 76, if required, must be submitted with the construction permit application documents pursuant to subrule 65.9(1). If a construction permit is

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

not required pursuant to subrule 65.7(1), the department's declaratory order indicating that the location is not in the one hundred year flood plain and a copy of the department's flood plain development permit pursuant to 567—Chapters 70 to 76, if required, must be submitted when a construction design statement is filed pursuant to subrules 65.9(3) and 65.9(6).

**65.9(5) Karst terrain submittal requirements.** Prior to beginning construction of a confinement feeding operation, the person planning the construction shall determine whether the proposed confinement feeding operation structure will be located in karst terrain, as defined in 567—65.1(459,459B). The karst terrain determination shall be obtained by using the AFO Siting Atlas located at the department's official Web site or by consulting a qualified department staff person, a soils professional normally engaged in the practice of soil investigation or NRCS qualified staff. The results of the karst terrain determination shall be submitted to the department according to the following:

a. If the proposed location is not in karst terrain, the person planning the construction, other than a small animal feeding operation, shall submit a printed map from the AFO Siting Atlas clearly showing the location of each proposed confinement feeding operation structure or a written statement by a qualified department staff person, a soils professional normally engaged in the practice of soil investigation or NRCS qualified staff with the construction permit application documents pursuant to subrule 65.9(1) or with the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required.

b. If the proposed location is in karst terrain, the person planning the construction shall submit a printed map from the AFO Siting Atlas clearly showing the location of each proposed confinement feeding operation structure and a copy of the soils exploration study required in paragraph 65.15(14) "c" with the construction permit application pursuant to subrule 65.9(1) or with the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required. In lieu of a printed map, a statement from a qualified department staff person, a soils professional normally engaged in the practice of soil investigation or NRCS qualified staff explaining the karst terrain determination may be submitted. It is recommended that the person planning the construction consult with a qualified staff person of the department before obtaining the soil borings. A formed manure storage structure, other than a small animal feeding operation, shall be constructed according to the upgraded concrete standards set forth in paragraph 65.15(14) "c" or Iowa Code section 459.307 if the structure is not constructed of concrete. Nonetheless, construction of an unformed manure storage structure in karst terrain is prohibited.

**65.9(6) Construction design statement.** Prior to beginning construction of a formed manure storage structure, a person planning construction at a confinement feeding operation, other than a small animal feeding operation, that is below the threshold requirements for an engineer as defined in 567—65.1(459,459B) shall file with the department a construction design statement, as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500 but less than 1,000 animal units that is required to obtain a construction approval letter from the department pursuant to subrule 65.7(7) but that is not required to obtain a construction permit pursuant to subrule 65.7(1) shall file with the department a construction design statement, as required in subrule 65.9(3). Within 30 days after filing of a construction design statement, the department may issue a construction approval letter as defined in 567—65.1(459,459B) if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation that has an animal unit capacity of 1,000 animal units or more but that is below the threshold requirements for an engineer as defined in 567—65.1(459,459B) shall file a construction design statement as part of the construction permit application and as required in subrule 65.9(1).

c. The construction design statement shall be filed on a form provided by the department and shall include all of the following:

(1) The name of the person planning construction at the confinement feeding operation, the name of the confinement feeding operation, the location of the proposed formed manure storage structure, a detailed description of the type of confinement feeding operation structure being proposed, the dimensions of the structure, and whether the structure will be constructed of reinforced concrete or steel.

(2) A manure management plan pursuant to 567—65.16(459,459B).

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(3) A certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the minimum concrete standards set forth in subrule 65.15(14). Otherwise, if the formed manure storage structure is to be constructed of steel, including a Slurry Store tank, a certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the requirements of Iowa Code chapter 459 and 567—Chapter 65.

(4) If the confinement feeding operation is also required to obtain a construction permit at a confinement feeding operation proposing three or more confinement feeding operation structures, the construction design statement shall include a drainage tile certification signed by the person responsible for constructing or excavating the formed manure storage structure, shall certify that construction will not impede established existing drainage, and shall verify that if existing drainage tiles are found, corrective actions will be implemented to immediately reestablish existing drainage.

d. The following operations are not required to file a construction design statement with the department:

(1) A small animal feeding operation that constructs a formed manure storage structure.

(2) A confinement feeding operation that submits a professional engineer design certification pursuant to subrule 65.9(6).

(3) A confinement feeding operation that meets or exceeds threshold requirements for an engineer as defined in 567—65.1(459,459B).

(4) A confinement feeding operation that utilizes an unformed manure storage structure or an egg washwater storage structure.

**65.9(7) Professional engineer design certification.** In lieu of a construction design statement prior to beginning construction of a formed manure storage structure, a confinement feeding operation, other than a small animal feeding operation, that is below the threshold requirements for an engineer pursuant to 567—65.1(459,459B) may file with the department a professional engineer design certification signed by a professional engineer licensed in the state of Iowa or an NRCS qualified staff person. The professional engineer design certification shall be site-specific and shall be filed on a form provided by the department as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500, but less than 1,000, animal units that is not required to obtain a construction permit pursuant to subrule 65.7(1) shall file with the department, at least 30 days before beginning construction of a formed manure storage structure, the professional engineer design certification as required in subrule 65.9(3). Within 30 days after filing of a professional engineer design certification, the department may issue a construction approval letter if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation with an animal unit capacity of 1,000 animal units or more that is required to obtain a construction permit pursuant to subrule 65.7(1) but that is below the threshold requirements for an engineer pursuant to 567—65.1(459,459B) shall file with the department the professional engineer design certification as part of the construction permit application and as required in subrule 65.9(1).

**65.9(8) Secondary containment barrier design submittal requirements.** The design for a secondary containment barrier to qualify any confinement feeding operation for the separation distance exemption provision in subrule 65.12(7) shall be filed with the department for approval prior to beginning construction of a formed manure storage structure that is part of a small animal feeding operation, shall accompany the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required, or shall be filed as part of the construction permit application pursuant to subrule 65.9(1). The secondary containment barrier shall meet the design standards of subrule 65.15(17) and shall be prepared according to the following:

a. If a manure storage structure stores liquid or semi-liquid manure, the secondary containment barrier design shall include engineering drawings prepared and signed by a professional engineer licensed in the state of Iowa or an NRCS qualified staff person.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

b. If the manure storage structure will store only dry manure, the owner or a representative of a confinement feeding operation shall submit to the department detailed drawings of the design for a secondary containment barrier.

ITEM 17. Amend paragraph **65.10(2)“b”** as follows:

*b. County comment.* Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the board may submit to the department comments by the board and the public regarding compliance of the construction permit application and manure management plan with the requirements in this chapter and Iowa Code chapter ~~455B~~ 459 for obtaining a construction permit. Comments may include, but are not limited to, the following:

(1) The existence of an object or location not included in the construction permit application which benefits from a separation distance requirement as provided in Iowa Code section ~~455B.162~~ 459.202 or ~~455B.204~~ 459.310.

(2) to (4) No change.

ITEM 18. Amend paragraphs **65.10(3)“a”** and **“b”** as follows:

*a. Enrollment periods.*

~~(1) For evaluation of construction permit applications filed during the period March 1, 2003, through January 31, 2004, the county board of supervisors must file an adopted construction evaluation resolution with the department between February 1, 2003, and February 28, 2003.~~

~~(2) For evaluation of construction permit applications filed during the period February 1, 2004, through January 31, 2005, the county board of supervisors must file an adopted construction evaluation resolution with the department between January 1, 2004, and January 31, 2004.~~

~~(3) (1) For evaluation of construction permit applications filed during subsequent annual periods, each beginning on February 1 and ending on January 31 one calendar year later, the county board of supervisors must file an adopted construction evaluation resolution with the department between January 1 and January 31 immediately prior to the commencement of the applicable annual period. The county board of supervisors must file an adopted construction evaluation resolution with the department between January 1 and January 31 of each year to evaluate construction permit applications received by the department between February 1 of that year and January 31 of the following year.~~

~~(4) (2) Filed construction evaluation resolutions shall remain in effect until the applicable enrollment period expires or until such time as the county board of supervisors files with the department a resolution rescinding the construction evaluation resolution, whichever is earlier.~~

~~(5) (3) Filing of an adopted construction evaluation resolution requires a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix. However, if the board fails to submit an adopted recommendation to the department, or fails to comply with the evaluation requirements in paragraph 65.10(3) “b,” the department shall disregard any adopted recommendation from that board until the board timely submits a new construction evaluation resolution.~~

*b. Use of the master matrix.* If a county board of supervisors has adopted and filed with the department a construction evaluation resolution, as provided in paragraph 65.10(3) “a,” the board shall evaluate all construction permit applications filed during the applicable period using the master matrix as follows:

(1) In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria which are part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into a manure management plan as provided in Iowa Code section ~~455B.203~~ 459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2.

(2) and (3) No change.

ITEM 19. Amend rule 567—65.11(459,459B) as follows:

**567—65.11(459,459B) Confinement feeding operation and stockpile separation distance requirements.** All animal confinement feeding operation structures, stockpiles and qualified stockpile

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

structures shall be separated from locations and objects as specified in this rule regardless of whether a construction permit is required. The separation distance requirements of this rule shall apply to all confinement feeding operation structures, unless specifically stated otherwise. If two or more confinement feeding operations are considered one operation as provided in 567—65.1(459,459B), definitions of “Adjacent—air quality” and “Adjacent—water quality,” the combined animal unit capacities of the individual operations shall be used for the purpose of determining the required separation. Exemptions Exemptions to the following requirements are allowed to the extent provided in 567—65.12(459,459B).

**65.11(1)** *Separation distance from residences, businesses, churches, schools and public use areas for new confinement feeding operations.* Separation from residences, businesses, churches, schools, and public use areas, ~~and thoroughfares~~ shall be as specified in Iowa Code section ~~455B.162~~ 459.202 and summarized in Table 6 at the end of this chapter. The residence, business, church, school, or public use area ~~or thoroughfare~~ must exist at the time an applicant submits an application for a construction permit to the department ~~or~~, at the time a manure management plan is submitted or construction design statement is filed with the department if a construction permit is not required, or at the time construction of the animal confinement feeding operation structure begins if a construction permit or manure management plan construction approval letter is not required.

**65.11(2)** *Separation distance from residences, businesses, churches, schools and public use areas for the expansion of prior constructed operations.* Except as provided in 567—65.12(459,459B) or as specified in Iowa Code section 459.203, an existing confinement feeding operation may be expanded if any of the following applies:

*a.* For a confinement feeding operation constructed prior to January 1, 1999, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code section 459.202, subsections 1 and 3, and summarized in Tables 6c (for swine, sheep, horses and poultry) and 6d (for beef and dairy cattle) at the end of this chapter.

*b.* For a confinement feeding operation constructed on or after January 1, 1999, but prior to March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code section 459.202, subsections 2 and 3, and summarized in Tables 6a (for swine, sheep, horses and poultry) and 6b (for beef and dairy cattle) at the end of this chapter.

*c.* For a confinement feeding operation constructed on or after March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code section 459.202, subsections 4 and 5, and summarized in Table 6 at the end of this chapter.

~~65.11(2)~~ **65.11(3)** *Separation distance from water sources, major water sources, known sinkholes and agricultural drainage wells.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a small animal feeding operation. Separation distances from any confinement feeding operation structure to surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources and major water sources shall be as specified in Iowa Code section 459.310 and summarized in ~~Table~~ Tables 6 to 6d at the end of this chapter. For the required separation distance to a major water source to apply, the major water source must be included in Table 1 at the end of this chapter at the time an applicant submits an application for a construction permit to the department, ~~or~~ at the time a manure management plan is submitted or construction design statement is filed with the department if a construction permit is not required, or at the time construction of the animal feeding operation structure begins (as defined in 65.8(1)) if a construction permit, ~~or~~ manure management plan or construction design statement is not required.

~~65.11(3)~~ **65.11(4)** *Separation distance from designated wetlands.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a small animal feeding operation. A confinement feeding operation structure shall not be constructed closer than 2,500 feet away from a “designated wetland” as defined and referenced in rule 567—65.1(459,459B). This requirement

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

shall not apply to a confinement feeding operation structure if any of the following occur before the wetland is included in "Designated Wetlands in Iowa," effective August 23, 2006:

*a. to d.* No change.

~~65.11(4)~~ 65.11(5) Separation distance from water wells. For a confinement feeding operation structures structure constructed after March 20, 1996, the separation distance to water wells shall be as specified in ~~Table~~ Tables 6 to 6d at the end of this chapter.

~~65.11(5)~~ Unformed manure storage structures shall not be constructed or expanded in an agricultural drainage well area as specified in Iowa Code section 455I.5.

~~65.11(6)~~ Separation distance from public thoroughfares. A confinement feeding operation structure shall not be constructed or expanded within 100 feet from a public thoroughfare.

~~65.11(7)~~ Stockpile and qualified stockpile structures—separation distance from residences. A stockpile or qualified stockpile structure shall not be placed closer than 1,250 feet from a residence not owned by the titleholder of the land where the stockpile is located, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

~~65.11(8)~~ Stockpile and qualified stockpile structures—separation distance from tile inlets, designated areas, high-quality water resources, agricultural drainage wells and known sinkholes. A stockpile or qualified stockpile structure shall not be placed within the following distances from any of the following:

*a.* A terrace tile inlet or surface tile inlet, 200 feet, unless the dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the terrace tile inlet or surface tile inlet. A terrace tile inlet or surface tile inlet does not include a tile inlet that is not directly connected to a tile line that discharges directly into a water of the state.

*b.* Designated area, 400 feet. However, an increased separation distance of 800 feet shall apply to all of the following:

(1) A high-quality water resource.

(2) An agricultural drainage well (400 feet for dry bedded manure).

(3) A known sinkhole (400 feet for dry bedded manure).

*c.* Paragraph 65.11(8)“b” does not apply if dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the designated area.

~~65.11(6)~~ 65.11(9) Measurement of separation distances. ~~The~~ Except as provided in paragraph “f,” the distance between ~~animal~~ confinement feeding operation structures and locations or objects from which separation is required shall be measured horizontally by standard survey methods between the closest point of the location or object (not a property line) and the closest point of the ~~animal~~ confinement feeding operation structure. The department may require that a separation distance be measured and certified by a licensed land surveyor, a professional engineer licensed in the state of Iowa, or USDA Natural Resources Conservation Service (NRCS) qualified staff in cases where the department cannot confirm a separation distance.

*a.* Measurement to an ~~anaerobic lagoon or earthen~~ unformed manure storage basin structure shall be to the point of maximum allowable level of manure pursuant to paragraph 65.2(3)“b.”

*b.* No change.

*c.* Measurement to a major water source or ~~watereourse~~ water source shall be to the top of the bank of the stream channel of a river or stream or the ordinary high water mark of a lake, ~~or~~ reservoir or designated wetland.

*d.* Measurement to a public thoroughfare shall be to the closest point of the right-of-way.

*e.* The separation distance for an ~~animal~~ a confinement feeding operation structure qualifying for the exemption to separation distances under 65.12(3)“b”(1) paragraphs 65.12(4)“b” and “c” shall be measured from the closest point of the ~~animal~~ confinement feeding operation structure ~~which is constructed or expanded after December 31, 1998.~~

*f.* Measurement to a cemetery shall be to the closest point of its property line.

*g.* Measurement to a stockpile shall be to the closest point of the stockpile.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 20. Amend rule 567—65.12(459,459B) as follows:

**567—65.12(459,459B) Exemptions and variances to confinement feeding operation and stockpile separation distance requirements and prohibition of construction on the one hundred year flood plain.**

**65.12(1)** *Exemptions to separation distance requirements from a residence, business, church, school and public use area.* As specified in Iowa Code section ~~455B.165~~ 459.205 as amended by 2009 Iowa Acts, House File 735, section 4, the separation distances required from residences, businesses, churches, schools, and public use areas and thoroughfares specified in Iowa Code section ~~455B.162~~ 459.202 and section 459.204B as amended by 2009 Iowa Acts, House File 735, section 3, and summarized in Table required in subrules 65.11(1), 65.11(2) and 65.11(7), including Tables 6 to 6d at the end of this chapter shall not apply to the following:

~~a.~~ *A confinement feeding operation structure which stores manure exclusively in a dry form.*

~~b. a.~~ *A confinement feeding operation structure, other than an unformed manure storage structure, if the structure is part of a small animal feeding operation or if the stockpile consists of dry manure originating from a small animal feeding operation.*

~~c. b.~~ *An animal A confinement feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure, stockpile or qualified stockpile structure is located, under such terms and conditions that the parties negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The benefited land is the land upon which is located the residence, business, church, school or public use area from which separation is required. The filed waiver shall preclude enforcement by the department of the separation distance requirements of Iowa Code section ~~455B.162~~ 459.202. A copy of the recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required or as part of the construction permit application documents pursuant to subrule 65.9(1).*

~~d. c.~~ *An animal A confinement feeding operation structure which is constructed or expanded closer than the separation distances required in subrules 65.11(1) and 65.11(2), including in Table Tables 6 to 6d at the end of this chapter, from a if the residence, business, church, or school was constructed or expanded after the date that the confinement feeding operation commenced operating or if the boundaries of the public use area, if the residence, business, church, school or public use area was constructed or or the city expanded after the date that the animal confinement feeding operation commenced operating. An animal A confinement feeding operation commences operating when it is first occupied by animals. A change in ownership or expansion of the animal confinement feeding operation does not change the date the operation commenced operating.*

~~d.~~ *The stockpile consists of dry manure originating exclusively from a confinement feeding operation that was constructed before January 1, 2006, unless the confinement feeding operation is expanded after that date.*

**65.12(2)** *Exemptions to separation distance requirements from public thoroughfares.* As specified in Iowa Code section ~~455B.165(4)~~ 459.205 as amended by 2009 Iowa Acts, House File 735, section 4, the separation required from thoroughfares specified in Iowa Code section ~~455B.162(5)~~ 459.202 and summarized in Table Tables 6 to 6d at the end of this chapter shall not apply if permanent vegetation stands between the animal feeding operation structure and that part of the right-of-way from which separation is required. The permanent vegetation must be at least seedlings of plants with mature height of at least 20 feet and stand along the full length of the structure. The minimum vegetation requirement shall be a single row of conifers or columnar deciduous trees on 12- to 16-foot spacing. It is recommended that the advice of a professional forester or nursery stock expert, a department district forester or the Natural Resource Conservation Service be sought to identify tree species for a specific site. to any of the following:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

a. A confinement building or a formed manure storage structure that is part of a small animal feeding operation. However, the exemptions of this subrule shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

b. If the state or a political subdivision constructing or maintaining the public thoroughfare executes a written waiver with the titleholder of the land where the confinement feeding operation structure is located. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required, or as part of the construction permit application documents pursuant to subrule 65.9(1).

**65.12(3)** *Exemptions to separation distance requirements for prior constructed operations and for operations that expand based on prior separation distance requirements.* As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and which does not comply with the statute's distance requirement may continue to operate regardless of the distance requirement and may expand as provided in subrule 65.11(2). As specified in Iowa Code section 455B.163, the separation required from residences, businesses, churches, schools, public use areas and thoroughfares specified in Iowa Code section 455B.162 and summarized in Table 6 at the end of this chapter shall not apply to confinement feeding operations constructed before the effective date of the separation distance in the following cases:

~~a. The confinement feeding operation continues to operate, but does not expand.~~

~~b. The animal feeding operation structure as constructed or expanded prior to January 1, 1999, complies with the distance requirements applying to that structure at the time of construction or expansion.~~

~~c. The confinement feeding operation expands on or after January 1, 1999, and any of the following apply:~~

~~(1) The animal feeding operation structure as constructed or expanded complies with the separation requirements. The separation required shall be based on the animal weight capacity of the entire confinement feeding operation, including existing and proposed structures.~~

~~(2) All of the following apply to the expansion:~~

~~1. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required.~~

~~2. The animal weight capacity of the confinement feeding operation which did not comply with a separation requirement that went into effect on May 31, 1995, after expansion is not more than the lesser double its capacity on May 31, 1995, or of 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine.~~

~~3. The animal weight capacity of a confinement feeding operation which complied with the separation requirements that went into effect on May 1, 1995, but did not comply with a separation requirement that went into effect on January 1, 1999, after expansion is not more than the lesser of double its capacity on January 1, 1999, or 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine.~~

~~(3) The confinement feeding operation is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures and all of the following apply:~~

~~1. The animal weight capacity of the portion of the operation that changes from unformed to formed manure storage does not increase.~~

~~2. Use of the replaced unformed manure storage structures is discontinued within one year after construction of the replacement formed manure storage structures.~~

~~3. The replacement formed manure storage structures do not provide more than 14 months of manure storage.~~

~~4. No portion of the operation after expansion is closer than before expansion to a location or object for which separation is required.~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(NOTE: A construction permit is not required to construct the replacement formed manure storage structures if a permit would not be required for the construction if the unformed manure storage structures did not exist.)

65.12(4) Exemptions to separation distance requirements for prior constructed operations that expand and cannot comply with prior separation distance requirements. As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and which does not comply with the distance requirements established in 567—65.11(459,459B) and the exemption in subrule 65.12(3) may be expanded if all of the following apply to the expansion:

a. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required in Iowa Code section 459.202.

b. For a confinement feeding operation that includes a confinement feeding operation structure constructed prior to March 1, 2003, the animal weight capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal weight capacity on the following dates:

1. May 31, 1995, for a confinement feeding operation that includes a confinement feeding operation structure constructed prior to January 1, 1999.

2. January 1, 1999, for a confinement feeding operation that only includes a confinement feeding operation structure constructed on or after January 1, 1999, but does include a confinement feeding operation structure constructed prior to March 1, 2003.

(2) Either of the following:

1. An animal weight capacity of 625,000 pounds for animals other than cattle.

2. An animal weight capacity of 1,600,000 pounds for cattle.

c. For a confinement feeding operation that does not include a confinement feeding operation structure constructed prior to March 1, 2003, the animal unit capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal unit capacity on March 1, 2003.

(2) 1,000 animal units.

65.12(5) Exemptions to separation distance requirements for prior constructed operations that replace an unformed manure storage structure. As specified in Iowa Code section 459.203, a confinement feeding operation that includes a confinement feeding operation structure that is constructed prior to March 1, 2003, may be expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures if all of the following apply:

a. The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any 14-month period.

d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under Iowa Code section 459.202 than any other confinement feeding operation structure which is part of the operation.

65.12(4) 65.12(6) Exemption to separation distance requirements from cemeteries. As specified in Iowa Code section 455B.165(7) 459.205 as amended by 2009 Iowa Acts, House File 735, section 4, the separation distance required from between a confinement feeding operation structure and a cemetery shall not apply to animal feeding operations structures on which construction or expansion began before January 1, 1999. if any of the following apply:

a. The confinement feeding operation structure was constructed or expanded prior to January 1, 1999.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

b. The construction or expansion of the confinement feeding operation structure began prior to January 1, 1999.

~~65.12(5)~~ 65.12(7) Exemptions to separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands and secondary containment. As specified in Iowa Code section ~~455B.204(3)~~ 459.310, subsection 3, the separation distance required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources, major water sources ~~and watercourses~~ and designated wetlands, specified in Iowa Code section ~~455B.204~~ 459.310 and summarized in ~~Table~~ Tables 6 to 6d at the end of this chapter, shall not apply to a farm pond, or privately owned lake as defined in Iowa Code section 462A.2, or to a confinement building, a manure storage structure or an egg washwater storage structure constructed with a secondary containment barrier according to subrule 65.15(17). To qualify for this separation distance exemption, the design of the secondary containment barrier shall be filed in accordance with subrule 65.9(8) prior to beginning construction of the confinement feeding operation structure.

65.12(8) Exemptions to prohibition on one hundred year flood plain construction and separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands—replacement formed manure storage structures. As specified in Iowa Code section 459.310, subsection 4, a separation distance required in subrules 65.11(3) and 65.11(4) or the prohibition against construction of a confinement feeding operation structure on a one hundred year flood plain as provided in paragraph 65.8(3) “e” shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures that are part of the confinement feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the replacement formed manure storage structures during any 18-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subrules 65.11(3) and 65.11(4) than any other confinement feeding operation structure which is part of the operation.

(5) The replacement formed manure storage structure meets or exceeds the requirements of Iowa Code section 459.307 as amended by 2009 Iowa Acts, House File 735, section 7, and subrule 65.15(14).

b. A replacement formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, pursuant to a variance granted by the department. In granting the variance, the department shall make a finding of all of the following:

(1) The replacement formed manure storage structure replaces the confinement feeding operation’s existing manure storage and handling facilities.

(2) The replacement formed manure storage structure complies with standards adopted pursuant to Iowa Code section 459.307 as amended by 2009 Iowa Acts, House File 735, section 7, and subrule 65.15(14).

(3) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation’s existing manure storage and handling facilities. If the formed manure storage structure will replace any existing manure storage structure, the department shall, as a condition of granting the variance, require that the replaced manure storage structure be properly closed.

~~65.12(6)~~ 65.12(9) Variances. Variances to the water well separation requirements in subrule 65.11(5) may be granted by the director if the ~~applicant~~ petitioner complies with the procedures and criteria in

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

561—Chapter 10 and provides an alternative that is substantially equivalent to the required separation distance or provides improved or greater protection for the water well. Requests Petition for a variance shall be made in writing at the time an application is submitted. The denial of a petition for variance request may be appealed to the environmental protection commission.

ITEM 21. Amend rule 567—65.15(459,459B) as follows:

**567—65.15(459,459B) Manure storage structure design requirements.** The requirements in this rule apply to all animal confinement feeding operation structures unless specifically stated otherwise.

**65.15(1)** Drainage tile removal for new construction of a manure storage structure. Prior to constructing a manure storage structure, other than storage of manure in an exclusively dry form, the site for the animal feeding operation structure shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

*a.* ~~Prior~~ One of the following procedures shall be performed prior to excavation for the berm of an unformed manure storage structure, the owner of the unformed manure storage structure shall follow any one of the following procedures:

(1) An inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet ~~from below~~ below the original grade and at least 50 feet from the beyond the structure's projected outside edge of the berm liquid surface at the high water level.

(2) A core trench shall be dug to a depth of at least 6 feet ~~from below~~ below the original grade at the projected center of the berm. After investigation for tile lines and any discovered tile lines are removed, an additional containment barrier shall be constructed underneath the center of the berm. The secondary additional containment barrier shall meet the same percolation standards as the lagoon or basin structure with the lateral flow potential restricted to one-sixteenth of an inch per day.

*b.* ~~The drainage~~ Drainage tile lines discovered near an unformed manure storage structure shall be removed within the projected site of an unformed manure storage structure and within 50 feet of the projected outside edge of the berm structure's liquid surface at the high water level shall be removed and rerouted to at least 50 feet beyond the projected structure's liquid surface at the high water level and within the projected site of the structure including under the berm. Drainage tile lines discovered upgrade from the structure shall be rerouted outside of 50 feet from the berm to continue the flow of drainage. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the unformed manure storage structure is located. All other drainage tile lines discovered shall be rerouted, capped, or plugged with concrete, Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines.

*c.* ~~The applicant for a construction permit for a formed manure storage structure shall investigate for tile lines during excavation for the structure. Drainage tile lines discovered upgrade from the structure shall be rerouted around the formed manure storage structure to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgrade tile lines. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located.~~

*d.* A confinement feeding operation required to obtain a construction permit pursuant to subrule 65.7(1) or to follow the upgraded concrete standards set forth in paragraph 65.15(14) "c" shall install a sample port device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table. In addition, a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~d. e.~~ An owner of a confinement feeding operation may utilize other Other proven methods approved by the department may be utilized to discover drainage tile lines.

~~e. f.~~ Variances to this subrule may be granted by the director if the owner of the confinement feeding operation petitioner complies with the procedures and criteria in 561—Chapter 10 and provides an alternative that is substantially equivalent to the this subrule or provides improved effectiveness or protection as required by the this subrule. A request Petition for a variance shall be made in writing at the time the application is submitted or prior to investigating for drainage tile, whichever is earlier. The denial of a variance may be appealed to the commission.

~~f. g.~~ A waiver to this subrule may be granted by the director The requirements of this subrule do not apply if sufficient information is provided that allows the department to conclude that the location does not have a history of drainage tile.

**65.15(2) to 65.15(5)** No change.

**65.15(6)** Soil testing for earthen structures. Applicants for construction permits for earthen manure storage structures shall submit soils information according to this subrule for the site of the proposed structure. All subsurface soil classification shall be based on American Society for Testing and Materials Designations D 2487-92 or D 2488-90. Soil corings shall be taken to determine subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Soil corings shall be conducted by a qualified person normally engaged in soil testing activities. Data from the soil corings shall be submitted with a construction permit application and shall include a description of the geologic units encountered, and a discussion of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin and a discussion that addresses the suitability of the proposed structure at the site. All soil corings shall be taken by a method that identifies the continuous soil profile and does not result in the mixing of soil layers. The number and location of the soil corings will vary on a case-by-case basis as determined by the designing engineer and accepted by the department. The following are minimum requirements:

*a. to d.* No change.

**65.15(7)** Hydrology.

*a. Groundwater table.* ~~A minimum separation of four feet between the top of the liner on for any earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor~~ unformed manure storage structure or earthen egg washwater storage structure and the groundwater table is recommended; however, in no case shall the top of the liner on for an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor unformed manure storage structure or earthen egg washwater storage structure be below the groundwater table. If the groundwater table is less than two feet below the top of the liner on for an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor unformed manure storage structure or earthen egg washwater storage structure, the aerobic unformed manure storage structure or earthen egg washwater storage structure, anaerobic lagoon, or earthen manure storage basin shall be provided with a synthetic liner as described in paragraph 65.15(12)“f.”

*b. Permanent artificial lowering of groundwater table.*

**(1) Unformed structures.** ~~The groundwater table around an anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ unformed manure storage structure or earthen egg washwater storage structure may be artificially lowered to levels required in paragraph “a” by using a gravity flow tile drainage system or other permanent nonmechanical system for artificial lowering of the groundwater table. ~~For a permitted animal feeding operation, detailed~~ Detailed engineering and soil drainage information shall be provided with a construction permit application for an ~~earthen aerobic structure, anaerobic lagoon or earthen manure storage basin~~ unformed manure storage structure or earthen egg washwater storage structure to confirm the adequacy of the proposed permanent system to provide the required drainage without materially increasing the seepage potential of the site. Drainage tiles shall not be located closer than 6 feet horizontally from the structure’s liquid surface at maximum operating depth. (See 65.15(1)“b” for monitoring and shutoff requirements for drainage tile lines installed to lower the groundwater table.)

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(2) Formed structures. For a formed manure storage structure or a formed egg washwater storage structure, partially or completely constructed below the normal soil surface, a tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure. (See 65.15(1) "b" for monitoring and shutoff requirements for drainage tile lines installed to lower the groundwater table.)

*c. Determination of groundwater table.* For purposes of this rule, groundwater table is the seasonal high water table determined by a licensed professional engineer, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or Natural Resources Conservation Service (NRCS). If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured using at least one of the following for either formed or unformed structures:

1. No change.

2. Test pits. The department may allow use of test pits in lieu of temporary monitoring wells if seasonal variation in climatic patterns, soil and geologic conditions prevent accurate determination of the seasonal high water table or prior to the construction of an unformed manure storage structure liner to ensure that the required separation distance to the groundwater table is being met. Test pits will be configured 3 feet × 4 feet × 4 feet, or equivalent volume, and the bottom of each pit The bottom of each test pit shall be at least 2 feet below the floor of the proposed anaerobic lagoon, earthen manure storage basin, earthen aerobic structure or settled open feedlot effluent basin manure storage structure or egg washwater storage structure. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS qualified staff for the determination of soil characteristics and related groundwater influence. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. One test pit shall be located in each corner and one in the center of the proposed manure control structure, unless otherwise specified by the department. A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils including mottling;
- Construction specifications; and
- Weather conditions both prior to and during the period in which test pits are open.

(2) No change.

**65.15(8) Karst features terrain and alluvial aquifer areas.**

*a.* The anaerobic lagoon or earthen manure storage basin An unformed manure storage structure or unformed egg washwater storage structure shall not be located on a site that exhibits karst features such as sinkholes, or solution channeling generally occurring in areas underlain by limestone or dolomite terrain.

*b.* Dry bedded confinement feeding operation structures constructed on karst terrain or in an alluvial aquifer area shall comply with all of the following:

(1) A minimum 5-foot layer of low permeability soil or rock between the bottom of the floor of the dry bedded confinement feeding operation structure and the underlying limestone, dolomite or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area is required. A professional engineer licensed in Iowa, NRCS qualified staff or a qualified organization shall submit a soil report, based on the results from soil borings or test pits, describing the subsurface materials and vertical separation distance from the proposed bottom of the dry bedded confinement feeding operation structure and the underlying limestone, dolomite or soluble rock. A minimum of two soil borings or test pits, at each end of the proposed structure, are required if acceptable well data are not available. After soil exploration is complete, each boring or test pit shall be properly plugged with concrete grout, bentonite or similar materials and documented in the soil report.

(2) The dry bedded confinement feeding operation structure shall be constructed with a floor consisting of reinforced concrete at least five inches thick conforming to the requirements of 65.15(14) "a" (2), numbered paragraphs "1," "3," "4," "6," "8" and "12."

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**65.15(9)** Bedrock separation. A minimum of four feet of separation between an unformed manure storage structure bottom and any bedrock formation is required. A ten-foot separation is recommended. A synthetic liner ~~shall be~~ is required if the unformed structure is to be located less than ten feet above a carbonate or limestone formation.

**65.15(10)** Flooding protection.

*a.* ~~An animal~~ A confinement feeding operation structure proposed to be constructed on land that would be inundated by Q100 shall meet requirements as specified in 567—Chapters 70 to 76, unless otherwise prohibited according to paragraph 65.15(10) "b."

*b.* A confinement feeding operation structure shall not be constructed on the one hundred year flood plain.

**65.15(11)** ~~Seals for anaerobic lagoons, aerobic structures, and earthen manure storage basins~~ unformed manure storage structures and unformed egg washwater storage structures. ~~A lagoon or basin~~ An unformed manure storage structure or egg washwater storage structure shall be sealed such that seepage loss through the seal is as low as practically possible. The percolation rate shall not exceed 1/16 inch per day at the design depth of the lagoon or basin structure. Following construction of the lagoon or basin structure, the results of a testing program which indicates the adequacy of the seal shall be provided to this department in writing prior to start-up of a permitted operation. ~~The owner of a confinement feeding operation not required to obtain a construction permit shall keep a record of the construction methods and materials used to provide the seal and any test results available on the adequacy of the seal.~~

**65.15(12)** ~~Aerobic structure, anaerobic lagoon, or earthen manure storage basin~~ Unformed manure storage structure and unformed egg washwater storage structure liner design and construction standards. ~~An aerobic structure, anaerobic lagoon or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure which receives a construction permit after January 21, 1998, shall comply with the following minimum standards in addition to subrule 65.15(11).

*a.* If the location of the proposed ~~aerobic structure, anaerobic lagoon or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure contains suitable materials as determined by the soil corings taken pursuant to subrule 65.15(6), those materials shall be compacted to establish a minimum of a 12-inch liner. A minimum initial overexcavation of 6 inches of material shall be required. The underlying material shall be scarified, reworked and compacted to a depth of 6 inches. The overexcavated materials shall be replaced and compacted.

*b.* If the location of the proposed ~~aerobic structure, anaerobic lagoon or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure does not contain suitable materials as determined by the soil corings taken ~~in~~ pursuant to subrule 65.15(6), suitable materials shall be obtained from another location approved by the department and shall be compacted to establish a minimum of a 24-inch liner.

*c.* and *d.* No change.

*e.* For purposes of this rule, suitable materials means soil, soil combinations or other similar material that is capable of meeting the permeability and compaction requirements. Sand seams, gravel seams, organic soils or other materials generally not suitable for ~~anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure construction are not considered suitable liner materials.

*f.* As an alternative to the above standards, a synthetic liner may be used. If the use of a synthetic liner is planned for an ~~earthen aerobic structure, an anaerobic lagoon, or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure, the permit application shall outline how the site will be prepared for placement of the liner, the physical, chemical, and other pertinent properties of the proposed liner, and information on the procedures to be used in liner installation and maintenance. In reviewing permit applications which involve use of synthetic liners, ~~DNR~~ the department will consider relevant synthetic liner standards adopted by industry, governmental agencies, and professional organizations as well as technical information provided by liner manufacturers and others.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**65.15(13)** Anaerobic lagoon design standards. An anaerobic lagoon shall meet the requirements of this subrule.

- a. No change.
- b. *Minimum stabilization volume and loading rate.*

(1) No change.

(2) In Lyon, Sioux, Plymouth, Woodbury, Osceola, Dickinson, Emmet, Kossuth, O'Brien, Clay, Palo Alto, Cherokee, Buena Vista, Pocahontas, Humboldt, Ida, Sac, Calhoun, and Webster ~~counties~~ Counties for all animal species other than beef there shall be 1000 cubic feet minimum design volume for each 4.5 pounds of volatile solids per day if the volatile solids produced per day are 6000 pounds or fewer. However, if a water analysis as required in ~~65.15(3) "c"(2)~~ 65.15(13) "c"(2) below indicates that the sulfate level is below 500 milligrams per liter, then the rate is 1000 cubic feet for each 5.0 pounds of volatile solids per day.

(3) to (6) No change.

c. to f. No change.

**65.15(14)** Concrete standards. A formed manure storage structure which is constructed of concrete on or after March 24, 2004, that is part of a confinement feeding operation other than a small animal feeding operation shall meet the following minimum standards. For the purpose of this subrule, a "PE" is a professional engineer licensed in the state of Iowa and an "NRCS engineer" is an engineer working for the USDA Natural Resources Conservation Service (NRCS). (CAVEAT: These standards are not intended to address other site-related engineering and construction considerations beyond the department's jurisdiction.)

a. and b. No change.

c. *Karst terrain—upgraded standards.* If the site of the proposed formed manure storage structure is located in ~~an area that exhibits~~ karst terrain or an area that drains into a known sinkhole, the minimum concrete standards set forth in paragraph 65.15(14) "a" or "b" shall apply. In addition, the following requirements apply to all formed manure storage structures that store nondry or dry manure:

(1) In an area that exhibits karst terrain or an area that drains into a known sinkhole, a PE, NRCS qualified staff or a qualified organization shall submit a soil exploration study based on the results from soil borings or test pits to determine the vertical separation between the bottom of the formed structure and limestone, dolomite, or other soluble rock. A minimum of two soil borings or two test pits, equally spaced within each formed structure, are required. After soil exploration is completed, each soil boring and test pit shall be properly plugged with concrete grout, bentonite, or similar materials.

~~(1) (2)~~ (2) A minimum 5-foot vertical separation distance layer of low permeability soil or rock between the bottom of a formed manure storage structure and limestone, dolomite, or other soluble rock is required if the formed manure storage structure is not designed by a PE or an NRCS engineer qualified staff.

~~(2) (3)~~ (3) If the vertical separation distance between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock is less than 5 feet, the structure shall be designed and sealed by a PE or an NRCS engineer qualified staff person who certifies the structural integrity of the structure. A 2-foot-thick layer of compacted clay liner material shall be constructed underneath the floor of the formed manure storage structure. However, it is recommended that any formed manure storage structure be constructed aboveground if the vertical separation distance between the bottom of the structure and the limestone, dolomite, or other soluble rock is less than 5 feet.

~~(3) In addition, in an area that exhibits karst terrain or an area that drains into a known sinkhole, a PE, an NRCS engineer or a qualified organization shall submit a soil exploration study based on the results from soil borings or test pits to determine the vertical separation between the bottom of the formed structure and limestone, dolomite, or other soluble rock. A minimum of two soil borings or two test pits, equally spaced within each formed structure, are required. After soil exploration is completed, each soil boring and pit shall be properly plugged with concrete grout, bentonite, or similar materials.~~

(4) Groundwater monitoring shall be performed as specified by the department.

(5) Backfilling shall not start until the floor slats have been placed or permanent bracing has been installed, and shall be performed with material free of vegetation, large rocks, or debris.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*d. Cold and hot weather concreting recommendations.* If air temperature is below 40 degrees Fahrenheit, the ACI Standard 306, "Recommended Practice for Cold Weather Concreting," should be followed. If ready-mix concrete temperature is above 90 degrees Fahrenheit, the ACI Standard 305, "Recommended Practice for Hot Weather Concreting," should be followed.

**65.15(15)** Berm erosion control.

*a.* The following requirements shall apply to ~~any anaerobic lagoons, earthen aerobic structures, or earthen manure storage basins~~ unformed manure storage structures and unformed egg washwater storage structures constructed after May 12, 1999.

(1) Concrete, riprap, synthetic liners or similar erosion control materials or measures shall be used on the berm surface below pipes where manure will enter the ~~anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ structure.

(2) Concrete, riprap, synthetic liners or similar erosion control materials or measures of sufficient thickness and area to accommodate manure removal equipment and to protect the integrity of the liner shall be placed at all locations on the berm, side slopes, and base of the ~~anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ structure where agitation or pumping may cause damage to the liner.

(3) Erosion control materials or measures shall be used at the corners of the ~~anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ structure.

(4) To control erosion, perennial (grass) vegetation must be maintained on the outer, top and inner dikes up to the two-foot freeboard level of the unformed storage structure or earthen egg washwater storage structure, unless covered by concrete, riprap, synthetic liners or similar erosion control materials or measures.

*b.* The owner of a confinement feeding operation with an ~~anaerobic lagoon, earthen aerobic structure, earthen manure storage basin, earthen waste slurry storage basin, or earthen~~ unformed manure storage structure or an unformed egg washwater storage structure shall inspect the structure berms at least semiannually for evidence of erosion. Erosion problems found which may impact either structural stability or liner integrity shall be corrected in a timely manner.

**65.15(16)** Agricultural drainage wells. After May 29, 1997, a person shall not construct a new or expand an existing ~~earthen aerobic structure, earthen anaerobic lagoon, earthen manure storage basin, earthen waste slurry storage basin, or earthen~~ unformed manure storage structure or an unformed egg washwater storage structure within an agricultural drainage well area.

**65.15(17)** Secondary containment barriers for manure storage structures. Secondary containment barriers used to qualify any confinement feeding operation for the exemption provision in subrule 65.12(5) 65.12(7) shall be filed with the department according to subrule 65.9(8) and shall meet the following design standards:

*a.* A secondary containment barrier shall consist of a structure surrounding or downslope of a manure storage structure ~~that is~~ and shall be designed according to either of the following:

(1) If the manure storage structure is used to store liquid or semiliquid manure, the secondary containment barrier shall be designed to contain 120 percent of the volume of manure stored above the manure storage structure's final grade or 50 percent of the volume of manure stored belowground or partially belowground, whichever is greater. Engineering drawings prepared by a professional engineer licensed in Iowa or NRCS qualified staff must be submitted according to procedures set forth in subrule 65.9(8) and must show compliance with 65.15(17) "a" to "d" or "e." If the containment barrier does not surround the manure storage structure, upland drainage must be diverted.

(2) If the manure storage structure is used for the storage of only dry manure, the secondary containment barrier shall be designed to contain at least 10 percent of the volume of manure stored. Detailed drawings prepared by the owner or a representative must be submitted according to procedures set forth in subrule 65.9(8) and must show compliance with 65.15(17) "a" to "d" or "e." If the containment barrier does not surround the manure storage structure, upland drainage must be diverted.

*b.* The barrier may be constructed of earth, concrete, or a combination of both, ~~and shall not have~~ If a relief outlet or valve is installed, the relief outlet or valve shall remain closed. Any accumulated liquid due to an overflow shall be land-applied as stated in the operation's manure management plan.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*c. to e.* No change.

**65.15(18)** Human sanitary waste shall not be ~~directed~~ discharged to a manure storage structure or egg washwater storage structure.

**65.15(19)** Requirements for qualified operations. A confinement feeding operation that meets the definition of a qualified operation shall only use an aerobic structure for manure storage and treatment. This requirement does not apply to a confinement feeding operation that only handles dry manure in a dry form or to an egg washwater storage structure or to a confinement feeding operation which was constructed before May 31, 1995, and does not expand.

**65.15(20)** No change.

ITEM 22. Amend rule 567—65.16(459,459B) as follows:

**567—65.16(459,459B) Manure management plan requirements.**

**65.16(1)** In accordance with Iowa Code section 455B.203 as amended by 2002 Iowa Acts, chapter 1137, section 38 459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2, the following persons are required to submit manure management plans to the department, including an original manure management plan and an updated manure management plan, as required by this rule:

*a.* An applicant for a construction permit for a confinement feeding operation. However, a manure management plan shall not be required of an applicant for an egg washwater storage structure or for a small animal feeding operation.

*b.* The owner of a confinement feeding operation, other than a small animal feeding operation, if one of the following applies:

(1) No change.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to Iowa Code section 455B.200A ~~as amended by 2002 Iowa Acts, chapter 1137, sections 28 and 29~~ 459.303, or whether the person has submitted a prior manure management plan.

*c.* No change.

*d.* A new owner of a confinement feeding operation may apply manure under the most recent owner's manure management plan until the new owner develops and submits an original manure management plan. The new owner must develop and submit an original manure management plan within 60 days after acquiring the operation.

~~*e.*~~ A research college is exempt from this subrule and the manure management plan requirements of rule 567—65.17(459,459B) for research activities and experiments performed under the authority of the research college and related to ~~animal~~ confinement feeding operations.

**65.16(2)** ~~Effective February 13, 2002, an~~ The owner of a proposed confinement feeding operation who is not required to obtain a construction permit pursuant to subrule 65.7(1) but who is required to file a manure management plan pursuant to paragraph 65.16(1) "b" shall submit file a construction design statement and provide the information required in subrule 65.9(3), including the confinement feeding operation's manure management plan, to the department at least 30 days before the construction of an animal feeding operation structure begins, as that term is defined in subrules 65.8(1) and 65.8(2). ~~After the manure management plan has been received by the department, the department will date-stamp the plan as received and provide written confirmation of receipt to the owner. In addition to the content requirements specified in rule 567—65.17(459), the owner shall include:~~

~~*a.* Documentation that the board of supervisors or auditor of the county where the confinement feeding operation is proposed to be located received a copy of the plan.~~

~~*b.* Information (e.g., maps, drawings, aerial photos) that clearly shows the intended location of the animal feeding operation structures and locations and animal weight capacities of any other confinement feeding operations within a distance of 2,500 feet in which the owner has an ownership interest or which the owner manages.~~

**65.16(3)** and **65.16(4)** No change.

**65.16(5)** Manure shall not be removed from a manure storage structure, which is part of a confinement feeding operation required to submit a manure management plan, until the department has

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

approved the plan. ~~As an exception to this requirement, until July 1, 2002, the owner of a confinement feeding operation may remove and apply manure from a manure storage structure in accordance with a manure management plan submitted to the department prior to September 18, 2001, but which has not been approved within the required 60-day period.~~ Manure shall be applied in compliance with rule 567—65.2(459,459B).

**65.16(6) Manure storage indemnity fee.** All persons required to submit a manure management plan to the department shall also pay to the department an indemnity fee as required in Iowa Code section ~~455J.3~~ 459.503 except those operations constructed prior to May 31, 1995, which were not required to obtain a construction permit.

**65.16(7) Filing fee.** Any person submitting an original manure management plan must also pay to the department a manure management plan filing fee of \$250. This fee shall be included with each original manure management plan being submitted. If the confinement feeding operation is required to obtain a construction permit and to submit an original manure management plan as part of the construction permit requirements, the applicant must pay the manure management plan filing fee together with the construction permit application fee, which total \$500.

ITEM 23. Amend rule 567—65.17(459,459B) as follows:

**567—65.17(459,459B) Manure management plan content requirements.** All manure management plans are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in Iowa Code section 459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2, and as described below.

**65.17(1) General.**

*a.* A confinement feeding operation that is required to submit a manure management plan to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. ~~When a phosphorus index is required in a manure management plan as provided in 65.17(1) "d," a~~ A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources reviewed and approved by the department including, but not limited to, Iowa State University, the United States Department of Agriculture (USDA), a licensed professional engineer, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) program, the Certified Crop Advisors (CCA) program, or the Registry of Environmental and Agricultural Professionals (REAP) program.

*b.* and *c.* No change.

*d.* A person who submits a manure management plan shall include a phosphorus index as part of the manure management plan ~~as follows:~~ required in subrule 65.17(17).

~~(1) A person who submitted an original manure management plan prior to April 1, 2002, shall submit a phosphorus index with the first manure management plan update on and after August 25, 2008.~~

~~(2) A person who submitted an original manure management plan on or after April 1, 2002, but prior to October 25, 2004, shall submit a phosphorus index with the first manure management plan update on and after August 25, 2006.~~

~~(3) A person who submits an original manure management plan on and after October 25, 2004, shall include the phosphorus index as part of the original manure management plan and manure management plan updates.~~

*e.* For persons who anticipate the need to apply liquid manure on frozen or snow-covered ground, manure management plans shall include a description of land identified for the application of liquid manure due to an emergency if allowed pursuant to subrule 65.3(4). The phosphorus index for each potential emergency application field must be calculated, and application rates should be calculated appropriately. Locations of downgradient surface water drain tile intakes within all fields included in the plan should be identified by map or coordinates. Future applications of liquid manure must take the nutrients added during emergencies into consideration.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**65.17(2) Manure management plans for sales of manure.** Selling manure means the transfer of ownership of the manure for monetary or other valuable consideration. Selling manure does not include a transaction where the consideration is the value of the manure, or where an easement, lease or other agreement granting the right to use the land only for manure application is executed.

*a.* No change.

*b.* A confinement feeding operation not fully covered by paragraph “a” above and that has an established practice of selling manure, or a confinement feeding operation that contains an animal species for which selling manure is a common practice, shall submit a manure management plan that includes the following:

~~(1) Until a phosphorus index is required as part of the manure management plan, an estimate of the number of acres required for manure application shall be calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the crop usage rate. Crop usage rate may be estimated by using a corn crop usage rate factor and an estimate of the optimum crop yield for the property in the vicinity of the confinement feeding operation.~~

~~(2) (1) When a phosphorus index is required as part of the manure management plan, an~~ An estimate of the number of acres required for manure application shall be calculated by one of the following methods:

1. and 2. No change.

~~(3) (2)~~ The total nitrogen available to be applied from the confinement feeding operation.

~~(4) (3)~~ The total phosphorus (as P<sub>2</sub>O<sub>5</sub>) available to be applied from the confinement feeding operation if the phosphorus index is required in accordance with paragraph 65.17(1) “d.”

~~(5) (4)~~ An estimate of the annual animal production and manure volume or weight produced.

~~(6) (5)~~ A manure sales form, ~~if~~ if manure will be sold, the manure sales form shall include the following information:

1. to 6. No change.

7. ~~When a phosphorus index is required as part of a manure management plan in accordance with 65.17(1) “d,”~~ a place for a phosphorus index of each field receiving manure, as defined in paragraph 65.17(17) “a,” including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

~~(7) (6)~~ Statements of intent if the manure will be sold. The number of acres indicated in the statements of intent shall be sufficient according to the manure management plan to apply the manure from the confinement feeding operation. The permit holder for an existing confinement feeding operation with a construction permit may submit past records of manure sales instead of statements of intent. The statements of intent shall include the following information:

1. to 4. No change.

~~(8) (7)~~ The owner shall maintain in the owner’s records a current manure management plan and copies of all of the manure sales forms; the sales forms must be completed and signed by each buyer of the manure and the applicant, and the copies must be maintained in the owner’s records for three years after each sale. ~~Effective August 25, 2006, the~~ The owner shall maintain in the owner’s records copies of all of the manure sales forms for five years after each sale. An owner of a confinement feeding operation shall not be required to maintain current statements of intent as part of the manure management plan.

**65.17(3) Manure management plan for nonsales of manure.** Confinement feeding operations that will not sell all of their manure shall submit the following for that portion of the manure which will not be sold:

*a.* No change.

*b.* The total nitrogen and total phosphorus (as P<sub>2</sub>O<sub>5</sub>) available to be applied from the confinement feeding operation.

*c. to h.* No change.

*i.* ~~When a phosphorus index is required as part of the manure management plan in accordance with 65.17(1) “d,”~~ the following are required: A phosphorus index of each field in the manure management plan, as defined in paragraph 65.17(17) “a,” including the factors used in the calculation. A copy of the

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

~~(1) The total phosphorus (as P<sub>2</sub>O<sub>5</sub>) available to be applied from the confinement feeding operation.~~

~~(2) A phosphorus index of each field in the manure management plan, as defined in 65.17(17) "a," including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.~~

**65.17(4)** *Manure management plan calculations to determine land area required for manure application.*

a. The number of acres needed for manure application for each year of the crop schedule shall be determined as follows: ~~as required in subrule 65.17(17).~~

~~(1) Until a phosphorus index is required in accordance with 65.17(1) "d," the requirements of 65.17(18) shall be followed.~~

~~(2) When a phosphorus index is required in accordance with 65.17(1) "d," the requirements of 65.17(17) shall be followed.~~

b. and c. No change.

**65.17(5)** No change.

**65.17(6)** *Optimum crop yield and crop schedule.*

a. To determine the optimum crop yield, the applicant may either exclude the lowest crop yield for the period of the crop schedule in the determination or allow for a crop yield increase of 10 percent. In using these methods, adjustment to update yield averages to current yield levels may be made if it can be shown that the available yield data is not representative of current yields. The optimum crop yield shall be determined using any of the following methods for the cropland where the manure is to be applied:

(1) and (2) No change.

(3) Proven yield methods. Proven yield methods may only be used if a minimum of the most recent three years of yield data for the crop is used. These yields can be proven on a field-by-field or farm-by-farm basis. To be considered a farm-by-farm basis, the fields must be owned, rented or leased for crop production by the person required to keep records pursuant to subrule 65.17(13) or included in a manure application agreement in that person's manure management plan. Crop disaster years may be excluded when there is a 30 percent or more reduction in yield for a particular field or farm from the average yield over the most recent five years. Excluded years shall be replaced by the most recent nondisaster years. Proven yield data used to determine application rates shall be maintained with the current manure management plan. Any of the following proven yield methods may be used:

1. to 3. No change.

b. No change.

**65.17(7)** No change.

**65.17(8)** *Location of manure application.*

a. The manure management plan shall identify each farm where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.

b. A copy of each written agreement executed with the owner of the land where manure will be applied shall be maintained with the current manure management plan. The written agreement shall indicate the number of acres on which manure from the confinement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation. Owners of dry bedded confinement feeding operations required to have a manure management plan may execute a written agreement with the landowner or the person renting the land for crop production where the dry bedded manure will be applied.

c. If a present location becomes unavailable for manure application, additional land for manure application shall be identified in the current manure management plan prior to the next manure application period.

**65.17(9)** No change.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**65.17(10)** *Methods to reduce soil loss and potential surface water pollution.* ~~The manure management plan shall include an identification of the methods, structures or practices that will be used to prevent or diminish soil loss and potential surface water pollution during the application of manure. Until a phosphorus index is required in accordance with 65.17(1) "d," the current manure management plan shall maintain a summary or copy of the conservation plan for the cropland where manure from the animal feeding operation will be applied if the manure will be applied on highly erodible cropland. The conservation plan shall be the conservation plan approved by the local soil and water conservation district or its equivalent. The summary of the conservation plan shall identify the methods, structures or practices that are contained in the conservation plan. When a phosphorus index is required in accordance with 65.17(1) "d," the~~ The manure management plan shall indicate for each field in the plan the crop rotation, tillage practices and supporting practices used to calculate sheet and rill erosion for the phosphorus index. A copy of the an NRCS RUSLE2 profile erosion calculation record shall satisfy the this requirement to indicate the crop rotation, tillage practices and supporting practices to calculate sheet and rill erosion. The plan shall also identify the highly erodible cropland where manure will be applied. ~~The manure management plan may include additional information such as whether the manure will be injected or incorporated or the type of manure storage structure.~~

**65.17(11)** and **65.17(12)** No change.

**65.17(13)** *Record keeping.* Records shall be maintained by the owner of a confinement feeding operation who is required to submit a manure management plan. This recorded information shall be maintained for three years following the year of application or for the length of the crop rotation, whichever is greater. ~~Effective August 25, 2006, records~~ Records shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the confinement feeding operation or at a residence or office of the owner or operator of the facility within 30 miles of the site. Records to demonstrate compliance with the manure management plan shall include the following:

a. to d. No change.

e. ~~Effective August 25, 2005, The~~ The date(s) and application rate(s) of commercial nitrogen and phosphorus on fields that received manure. However, if the date and application rate information is for fields which are not owned for crop production or which are not rented or leased for crop production by the person required to keep records pursuant to this subrule, an enforcement action for noncompliance with a manure management plan or the requirements of this subrule shall not be pursued against the person required to keep records pursuant to this subrule or against any other person who relied on the date and application rate in records required to be kept pursuant to this subrule, unless that person knew or should have known that nitrogen or phosphorus would be applied in excess of maximum levels set forth in paragraph 65.17(1) "a." If manure is applied to fields not owned, rented or leased for crop production by the person required to keep records pursuant to this subrule, that person shall obtain from the person who owns, rents or leases those fields a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the manure.

f. ~~When a phosphorus index is required in accordance with 65.17(1) "d," a~~ A copy of the current soil test lab results for each field in the manure management plan.

g. No change.

**65.17(14)** to **65.17(16)** No change.

**65.17(17)** *Use of the phosphorus index.* Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorus Index as specified by the USDA Natural Resources Conservation Service (NRCS) Iowa Technical Note No. 25.

a. No change.

b. When sheet and rill erosion is calculated for the phosphorus index, the soil type used for the calculation shall be the most erosive soil map unit that is at least 10 percent of the total field area. Effective September 15, 2010, in all original and complete manure management plans submitted to the department for approval, the dominant critical soil map unit consistent with NRCS conservation planning guidelines shall be used to calculate sheet and rill erosion for the phosphorus index. (See NRCS Technical Note No. 29.)

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*c.* and *d.* No change.

*e.* For an original manure management plan, previous soil sampling data that does not meet the requirements of subrule 65.17(16) may be used in the phosphorus index if the data is four years old or less. In the case of fields for which soil sampling data is used that does not meet the requirements of subrule 65.17(16), the fields must be soil-sampled according to the requirements of subrule 65.17(16) no more than one year after the original manure management plan is approved.

*f.* The following are the manure application rate requirements for fields that are assigned the phosphorus index site vulnerability ratings below as determined by the NRCS Iowa Technical Note No. 25 to the NRCS 590 standard rounded to the nearest one-hundredth:

(1) to (3) No change.

(4) High (>5-15). Manure shall not be applied on a field with a rating greater than 5 and less than or equal to 15 until practices are adopted which reduce the phosphorus index to at least the Medium risk category. ~~However, prior to December 31, 2008, fields with a phosphorus index greater than 5 and less than or equal to 10 may receive manure at a phosphorus-based rate in accordance with 65.17(19) if practices will be adopted to reduce the phosphorus index to the Medium risk category.~~

(5) No change.

*g.* No change.

*h.* Updating the phosphorus index.

(1) and (2) No change.

(3) An operation must submit a complete manure management plan using a new phosphorus index, including soil sampling as required in subrule 65.17(16), for each field in the manure management plan a minimum of once every four years.

**65.17(18)** No change.

**65.17(19)** *Requirements for application of a phosphorus-based manure rate to a field.*

*a.* to *e.* No change.

*f.* Phosphorus in manure should be considered 100 percent available unless soil phosphorus concentrations are below optimum levels for crop production. If soil phosphorus concentrations are below optimum levels for crop production phosphorus availability, values suggested in Iowa State University extension publication PM 484 PMR 1003, "Managing Using Manure Nutrients for Crop Production" or other credible sources shall be used.

**65.17(20)** No change.

ITEM 24. Amend rule 567—65.18(459,459B) as follows:

**567—65.18(459,459B) Construction certification.** A confinement feeding operation which obtains a construction permit after March 20, 1996, shall submit to the department a construction certification from a licensed professional engineer that the manure storage structure in which manure is stored in a liquid or semiliquid form or the egg washwater storage structure was according to the following:

**65.18(1)** For a confinement feeding operation that is below the threshold requirements for an engineer as defined in 567—65.1(459,459B), prior to using a permitted confinement feeding operation structure, the person responsible for constructing a formed manure storage structure or the permittee shall submit to the department a construction certification, as specified in the construction permit.

**65.18(2)** For a confinement feeding operation that uses an unformed manure storage structure or an egg washwater storage structure, or an operation that meets or exceeds the threshold requirements for an engineer as defined in 567—65.1(459,459B), a certification from a licensed professional engineer that the confinement feeding operation structure was:

~~1. *a.* Constructed in accordance with the design plan. If actual construction deviates from the approved plans, identify all~~ Any changes to the approved plans must first be authorized by the department and ~~certify~~ must include a certification that the proposed changes were are consistent with the standards of these rules or statute;

~~2. *b.* Supervised by the licensed professional engineer or a designee of the engineer during critical points of the construction. A designee shall not be the permittee, owner of the confinement feeding operation, a direct employee of the permittee or owner, or the contractor or an employee of the contractor;~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

3. *c.* Inspected by the licensed professional engineer after completion of construction and before commencement of operation; and

4. *d.* Constructed in accordance with the drainage tile removal standards of subrule 65.15(1), and including a report of the findings and actions taken to comply with this subrule 65.15(1).

ITEM 25. Amend subrules 65.19(1), 65.19(2), 65.19(5), 65.19(6) and 65.19(8) as follows:

**65.19(1)** A commercial manure service, ~~or a commercial manure service representative or a confinement site manure applicator~~ shall not transport, handle, store or apply dry or liquid manure to land, unless the person is certified. A confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. A person is not required to be certified as a confinement site manure applicator if the person applies manure which originates from a manure storage structure which is part of a small animal feeding operation. Certification of a commercial manure service representative under this rule will also satisfy the commercial license requirement under 567—Chapter 68 only as it applies to manure removal and application. Each person who operates a manure applying vehicle or equipment must be certified individually except as allowed in subrule 65.19(7).

**65.19(2)** Fees.

*a. Commercial manure service.* ~~Effective January 1, 2004, the~~ The fee for a new or renewed certification of a service is \$200. The commercial manure service shall designate one manager for the service and shall provide the department with documentation of the designation.

*b. Commercial manure service representative.* ~~Effective January 1, 2004, the~~ The fee for a new or renewed representative certification is \$75. The manager of a commercial manure service must be certified as a commercial manure service representative, but is exempt from paying the \$75 certification fee.

*c. Confinement site manure applicator.* ~~Effective January 1, 2003, the~~ The fee for a new or renewed certification is \$100. However, the fee is not required if all of the following apply:

(1) to (3) No change.

*d. Educational fee.* ~~Effective May 30, 2003, commercial~~ Commercial manure service representatives, managers and confinement site manure applicators shall pay an educational fee to be determined annually by the department.

*e. and f.* No change.

**65.19(5)** Examinations.

*a.* A person wishing to take the examination required to become a certified commercial manure service representative or certified confinement site manure applicator may request ~~a listing of dates and locations of examinations~~ an appointment. The applicant must have a photo identification card at the time of taking the examination.

*b. and c.* No change.

**65.19(6)** Continuing instruction courses in lieu of examination.

*a.* No change.

*b.* To establish or maintain certification, a confinement site manure applicator must either pass an examination every three years or attend two hours of continuing instructional courses each year. A confinement site manure applicator who chooses to attend instructional courses but fails to attend instructional courses each year must pass an examination as provided in subrule 65.19(5) to maintain certification.

**65.19(8)** Certified commercial manure services have the following obligations:

*a.* No change.

*b.* Comply with the provisions of the manure management plan (MMP) prepared for the ~~animal confinement~~ feeding operation and the requirements of 567—65.2(459,459B) and 567—65.3(459,459B). If a manure management plan does not exist, the requirements of 567—65.2(459,459B) and 567—65.3(459,459B) must still be met.

*c. to f.* No change.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 26. Amend rule 567—65.20(459,459B), introductory paragraph, as follows:

**567—65.20(459,459B) Manure storage indemnity fund.** The manure storage indemnity fund created in Iowa Code ~~chapter 455J~~ section 459.501 will be administered by the department. Moneys in the fund shall be used for the exclusive purpose of administration of the fund and the cleanup of eligible facilities at confinement feeding operation sites.

ITEM 27. Amend subrule 65.20(8) as follows:

**65.20(8) Subrogation.** The fund is subrogated to all county rights regarding any claim submitted or paid as provided in Iowa Code section ~~455J.5(5)~~ 459.505.

ITEM 28. Amend rule 567—65.21(459,459B), introductory paragraph, as follows:

**567—65.21(459,459B) Transfer of legal responsibilities or title.** If title or legal responsibility for a permitted ~~animal~~ confinement feeding operation and its ~~animal~~ confinement feeding operation ~~storage~~ structure is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the permit and these rules. The person to whom the permit was issued and the person to whom title or legal responsibility is transferred shall notify the department of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the permit to reflect the transfer of legal responsibility. A person who has been classified as a habitual violator under Iowa Code section ~~455B.191~~ 459.604 shall not acquire legal responsibility or a controlling interest to any additional permitted confinement feeding operations for the period that the person is classified as a habitual violator. A person who has an interest in a confinement feeding operation that is the subject of a pending enforcement action shall not acquire legal responsibility or an interest to any additional permitted confinement feeding operations for the period that the enforcement action is pending.

ITEM 29. Amend **567—Chapter 65**, implementation sentence for Division I, as follows:

These rules are intended to implement Iowa Code sections ~~455B.104, 455B.101, 455B.103, 455B.134(3) “e,” “f,” and 455B.171 to 455B.188, and 455B.191;~~ Iowa Code chapter 459; ~~and 1998 Iowa Acts, chapter 1209, sections 41 and 44 to 47 and 2009 Iowa Acts, House File 735 and Senate File 432.~~

ITEM 30. Amend rule 567—65.100(455B,459,459A), introductory paragraph, as follows:

**567—65.100(455B,459,459A) Definitions.** In addition to the definitions in Iowa Code sections 455B.101 ~~and~~, 455B.171 and ~~2005 Iowa Code Supplement~~ section 459A.102, the following definitions shall apply to Division II of this chapter:

ITEM 31. Amend rule **567—65.100(455B,459,459A)**, definitions of “Animal unit” and “Open feedlot operation,” as follows:

“Animal unit” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

- |  |        |
|--|--------|
| 1. Slaughter and feeder cattle                                     | 1.000  |
| 2. Immature dairy cattle   | 1.000  |
| 3. Mature dairy cattle   | 1.400  |
| 4. Butcher or breeding swine weighing more than 55 pounds          | 0.400  |
| 5. Swine weighing 15 pounds or more but not more than 55 pounds    | 0.100  |
| 6. Sheep or lambs  | 0.100  |
| 7. Horses  | 2.000  |
| 8. Turkeys weighing <del>12 ounces</del> <u>7 pounds</u> or more   | 0.018  |
| 9. Turkeys weighing less than <del>12 ounces</del> <u>7 pounds</u> | 0.0085 |

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

10. ~~Chickens~~ Broiler or layer chickens weighing 48 ounces 3 pounds or more 0.010  
 11. ~~Chickens~~ Broiler or layer chickens weighing less than 48 ounces 3 pounds 0.0025

“*Open feedlot operation*” means an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation. “*Open feedlot operation*” includes a “*partially roofed animal feeding operation*” as defined in this rule.

2005 Iowa Code Supplement section 459A.103 provides that two or more open feedlot operations under common ownership or management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal. To determine if two or more open feedlot operations are deemed to be one open feedlot operation, the first test is whether the open feedlot operations are under common ownership or management. If they are not under common ownership or management, they are not one open feedlot operation. The second test is whether the two open feedlot operations are adjacent or utilize a common area or system for open feedlot effluent disposal. If the two operations are not adjacent and do not use a common area or system for open feedlot effluent disposal, they are not one open feedlot operation.

ITEM 32. Adopt the following **new** definitions of “Livestock market,” “Partially roofed animal feeding operation” and “Water well” in rule **567—65.100(455B,459,459A)**:

“*Livestock market*” means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

“*Partially roofed animal feeding operation*” means an animal feeding operation in which the animals have unrestricted access from any attached roofed structure and the square footage of the unroofed area is at least 10 percent of the square footage of any attached roofed area.

“*Water well*” means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. “*Water well*” does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

ITEM 33. Amend subrule 65.101(8) as follows:

**65.101(8)** Stockpiling of scraped manure and settleable solids. ~~A CAFO must manage stockpiles as required by 65.101(2) or 65.101(3).~~ Stockpiles of manure scraped from open feedlot operations and stockpiles of settleable solids shall comply with the following requirements.

*a.* Stockpiles must be land-applied in accordance with subrule 65.101(6) as soon as possible but not later than six months after they are established.

*b.* Stockpiles shall not be located within ~~200~~ 400 feet from a designated area or, in the case of a high-quality water resource, within 800 feet, ~~and areas of concentrated flow located downslope of and within 200 feet of the stockpile shall be planted to permanent vegetation cover, including filter strips and riparian forest buffers.~~

*c.* Stockpiles shall not be located in grassed waterways or areas where water ponds or has concentrated flow.

*d.* Stockpiles shall not be located within 200 feet of a ~~drainage tile line intake~~ terrace tile inlet or surface tile inlet or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the ~~intake inlet~~ or sinkhole.

*e.* Stockpiles shall not be located on land having a slope of more than 3 percent unless methods, structures or practices are implemented to contain the stockpiled solids, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 34. Amend subrule 65.105(2) as follows:

**65.105(2)** *When a construction permit is not required.*

a. *Research colleges.* A construction permit is not required for construction of a settled open feedlot effluent basin or AT system if the basin or system is part of an open feedlot operation which is owned by a research college conducting research activities as provided in 2005 Iowa Code Supplement section 459A.105.

b. *Solids settling facilities.* ~~A construction permit is not required for construction of a solids settling facility.~~ If only solids settling facilities are being constructed, a construction permit is not required. If solids settling facilities are proposed as part of a project that includes facilities that require a construction permit, then the proposed solids settling facilities are subject to a construction permit.

ITEM 35. Amend rule 567—65.108(455B,459A) as follows:

**567—65.108(455B,459A) Well Water well separation distances for open feedlot operations.**

**65.108(1)** *Settled open feedlot effluent basins.* Settled open feedlot effluent basins shall be separated from water wells as follows:

a. *Public wells.* 1,000 feet from shallow wells and 400 feet from deep wells;

b. *Private wells.* 400 feet from both shallow and deep wells.

**65.108(2)** *Open feedlots, solids settling facilities, feed storage runoff control structures and AT systems.* Open feedlots, solids settling facilities, feed storage runoff control structures and AT systems shall be separated from water wells as follows: for both public and private wells, 200 feet from shallow wells and 100 feet from deep wells.

**65.108(3)** *Variances.* Variances to this rule may be granted by the director if the applicant petitioner complies with the procedures and criteria in 561—Chapter 10 and provides an alternative that is substantially equivalent to the rule or provides improved effectiveness or protection as required by the rule. Variance requests Petition for a variance shall be made in writing at the time the construction permit application is submitted. The denial of a variance may be appealed to the commission.

ITEM 36. Amend paragraph **65.112(8)“a”** as follows:

a. Restrictions on the application of open feedlot effluent based on all of the following:

(1) No change.

(2) Calculations necessary to determine the land area required for the application of manure, process wastewater and open feedlot effluent from an open feedlot operation based on nitrogen or phosphorus use levels (as determined by phosphorus index) in order to obtain optimum crop yields according to a crop schedule specified in the nutrient management plan, and according to requirements specified in subrule 65.17(4). The 100 pounds of available nitrogen per acre limitation specified in paragraph 65.17(18)“c” (applicable to open feedlot operations and combined open feedlot and confinement operations with an NPDES permit because of requirements in subrule 65.17(4)) pertaining to liquid manure applied to land currently planted to soybeans or to land where a soybean crop is planned applies only to liquid manure, process wastewater or settled open feedlot effluent.

ITEM 37. Amend **567—Chapter 65**, Tables 3, 3a, 5 and 6, as follows:

TABLE 3

Annual Pounds of Nitrogen Per Space of Capacity

Source: PM 1811, Managing Manure Nutrients for Crop Production Confinement Operations

Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Nursery, 25 lb.	1 head	2	1	5
<u>Wean-finish, 130 lb.</u>				
<u>Formed storage*</u>				
<u>Dry feeders</u>	<u>1 head</u>	<u>15</u>		<u>34</u>

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

<b>Swine</b>	<b>Space</b>	<b>Liquid, Pit* or Basin**</b>	<b>Liquid, Lagoon***</b>	<b>Solid Manure</b>
Wet/dry feeders	1 head	13		34
Grow-finish, 150 lb. Formed storage*				
Dry feeders	1 head	21		29
Wet/dry feeders	1 head	19		29
Earthen storage**	1 head	14		29
Lagoon***	1 head		6	29
Gestation, 400 lb.	1 head	27	5	39
Sow & Litter, 450 lb.	1 crate	32	11	86
Farrow-nursery	Per sow in breeding herd	22	8	85
Farrow-finish	Per sow in breeding herd	150	44	172

<b>Dairy, Confined</b>	<b>Space</b>	<b>Liquid, Pit* or Basin**</b>	<b>Liquid, Lagoon***</b>	<b>Solid Manure</b>
Cows, 1200 & up lb.	1 head	164	59	140
Heifers, 900 lb.	1 head	81	44	65
Calves, 500 lb.	1 head	45	24	15
Veal calves, 250 lb.	1 head	22	12	10
Dairy herd	Per productive cow in herd	169	87	180

<b>Beef, Confined</b>	<b>Space</b>	<b>Liquid, Pit* or Basin**</b>	<b>Liquid, Lagoon***</b>	<b>Solid Manure</b>
Mature cows, 1000 lb.	1 head	105	23	147
Finishing, 900 lb.	1 head	95	19	132
Feeder calves, 500 lb.	1 head	53	11	73

<b>Poultry</b>	<b>Space</b>	<b>Dry Manure</b>
Layer, cages	1000 head	367
Broiler, litter	1000 head	585
Turkeys, litter	1000 head	1400

Open Feedlot OperationsRunoff – liquids

<u>Species</u>	<u>Space</u>	<u>Earthen lots</u>	<u>Concrete lots</u>	<u>Solids-scraped</u>
Beef, 400 sq. ft./hd.	1 head	5	3	66
Dairy, 1000 sq. ft./hd.	1 head	15	7	127
Swine, 50 sq. ft./hd.	1 head	1	3	18

\* Formed manure storage structure

\*\* Earthen manure storage basin

\*\*\* Anaerobic lagoon

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

TABLE 3a

Annual Pounds of Phosphorus (as P<sub>2</sub>O<sub>5</sub>) Per Space of CapacitySource: PM 1811, Managing Manure Nutrients for Crop Production Confinement Operations

<b>Swine</b>	<b>Space</b>	<b>Liquid, Pit* or Basin**</b>	<b>Liquid, Lagoon***</b>	<b>Solid Manure</b>
Nursery, 25 lb.	1 head	1	0.7	3
<u>Wean-finish, 130 lb.</u>				
<u>Formed storage*</u>				
<u>Dry feeders</u>	<u>1 head</u>	<u>12</u>		<u>21</u>
<u>Wet/dry feeders</u>	<u>1 head</u>	<u>9</u>		<u>21</u>
Grow-finish, 150 lb.				
Formed storage*				
Dry feeders	1 head	45 <u>18</u>		18
Wet/dry feeders	1 head	13		18
Earthen storage**	1 head	10		48
Lagoon***	1 head		5	48
Gestation, 400 lb.	1 head	27	4	25
Sow & Litter, 450 lb.	1 crate	26	8	55
Farrow-nursery	Per sow in breeding herd	18	6	55
Farrow-finish	Per sow in breeding herd	109	33	110
<b>Dairy, Confined</b>	<b>Space</b>	<b>Liquid, Pit* or Basin**</b>	<b>Liquid, Lagoon***</b>	<b>Solid Manure</b>
Cows, 1200 & up lb.	1 head	78	44	42
Heifers, 900 lb.	1 head	38	33	20
Calves, 500 lb.	1 head	22	18	5
Veal calves, 250 lb.	1 head	10	9	3
Dairy herd	Per productive cow in herd	80	66	80
<b>Beef, Confined</b>	<b>Space</b>	<b>Liquid, Pit* or Basin**</b>	<b>Liquid, Lagoon***</b>	<b>Solid Manure</b>
Mature cows, 1000 lb.	1 head	66	17	73
Finishing, 900 lb.	1 head	59	14	66
Feeder calves, 500 lb.	1 head	33	8	37
<b>Poultry</b>	<b>Space</b>			<b>Dry Manure</b>
Layer, cages	1000 head			840
Broiler, litter	1000 head			585
Turkeys, litter	1000 head			1400

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Open Feedlot OperationsRunoff – liquids

<u>Species</u>	<u>Space</u>	<u>Earthen lots</u>	<u>Concrete lots</u>	<u>Solids-scraped</u>
<u>Beef, 400 sq. ft./hd.</u>	<u>1 head</u>	<u>2</u>	<u>1</u>	<u>48</u>
<u>Dairy, 1000 sq. ft./hd.</u>	<u>1 head</u>	<u>5</u>	<u>2</u>	<u>69</u>
<u>Swine, 50 sq. ft./hd.</u>	<u>1 head</u>	<u>0.3</u>	<u>1</u>	<u>17</u>

\* Formed manure storage structure

\*\* Earthen manure storage basin

\*\*\* Anaerobic lagoon

TABLE 5

## Manure Production Per Space of Capacity

	<u>Space</u>	<u>Daily</u>		<u>Yearly</u>
		<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
<b>Swine</b>				
Nursery, 25 lb.	1 head	0.2 gal	0.7 gal	0.34 tons
<u>Wean-finish, 130 lb.</u>				
<u>Formed storage*</u>				
<u>Dry feeders</u>	<u>1 head</u>	<u>0.86 gal</u>		<u>2.39 tons</u>
<u>Wet/dry feeders</u>	<u>1 head</u>	<u>0.66 gal</u>		<u>2.39 tons</u>
Grow-finish, 150 lb.				
<u>Formed storage*</u>				
<u>Dry feeders</u>	1 head	1.2 gal		2.05 tons
<u>Wet/dry feeders</u>	1 head	0.90 gal		2.05 tons
<u>Earthen storage**</u>	1 head	1.2 gal		2.05 tons
<u>Lagoon***</u>	1 head		4.1 gal	2.05 tons
Gestation, 400 lb.	1 head	3.0 gal	3.7 gal	2.77 tons
Sow & Litter, 450 lb.	1 crate	3.5 gal	7.5 gal	6.16 tons
Farrow-nursery	Per sow in breeding herd	2.2 gal	5.4 gal	6.09 tons
Farrow-finish	Per sow in breeding herd	9.4 gal	30 gal	12.25 tons
<b>Dairy, Confined</b>				
Cows, 1200 & up lb.	1 head	18.0 gal	40.1 gal	14 tons
Heifers, 900 lb.	1 head	8.8 gal	29.9 gal	6.5 tons
Calves, 500 lb.	1 head	4.9 gal	16.5 gal	1.5 tons
Veal calves, 250 lb.	1 head	2.5 gal	8.2 gal	1.1 tons
Dairy herd	Per productive cow in herd	18.5 gal	59.8 gal	20 tons

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

<b>Beef, Confined</b>	<b>Space</b>	<b>Liquid, Pit* or Basin**</b>	<b>Liquid, Lagoon***</b>	<b>Solid Manure</b>
Mature cows, 1000 lb.	1 head	7.2 gal	15.7 gal	12.23 tons
Finishing, 900 lb.	1 head	6.5 gal	13.1 gal	11.00 tons
Feeder calves, 500 lb.	1 head	3.6 gal	7.3 gal	6.11 tons

<b>Poultry</b>	<b>Space</b>	<b>Dry Manure</b>
Layer, cages	1000 head	10.5 tons
Broiler, litter	1000 head	9.00 tons
Turkeys, litter	1000 head	35.00 tons

\* Formed manure storage structure

\*\* Earthen manure storage basin

\*\*\* Anaerobic lagoon

TABLE 6

Required Separation Distances for Confinement Feeding Operations Constructed on or after March 1, 2003—Swine, Sheep, Horses, Poultry, and Beef and Dairy Cattle

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS <sup>1</sup>				
Type of Structure	Animal Unit (AU) Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	<u>500 AU or less</u>	<u>1,875 feet</u>	<u>1,875 feet</u>	<u>1,875 feet</u>
	<u>&gt;500 AU to &lt;1,000 AU</u>	1,875 feet	1,875 feet	1,875 feet
	<u>1,000 AU to &lt;3,000 AU</u>	2,500 feet	2,500 feet	2,500 feet
	3,000 AU or more	3,000 feet	3,000 feet	3,000 feet
Covered earthen manure storage basins	<u>500 AU or less</u>	<u>1,250 feet</u>	<u>1,875 feet</u>	<u>1,875 feet</u>
	<u>&gt;500 AU to &lt;1,000 AU</u>	1,250 feet	1,875 feet	1,875 feet
	<u>1,000 AU to &lt;3,000 AU</u>	1,875 feet	2,500 feet	2,500 feet
	3,000 AU or more	2,375 feet	3,000 feet	3,000 feet
Uncovered formed manure storage structures	<u>500 AU or less</u>	<u>None</u>	<u>None</u>	<u>None</u>
	<u>&gt;500 AU to &lt;1,000 AU</u>	1,500 feet	1,875 feet	1,875 feet
	<u>1,000 AU to &lt;3,000 AU</u>	2,000 feet	2,500 feet	2,500 feet
	3,000 AU or more	2,500 feet	3,000 feet	3,000 feet

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Confinement buildings and covered formed manure storage structures	<u>500 AU or less</u>	<u>None</u>	<u>None</u>	<u>None</u>
	<u>&gt;500 AU to &lt;1,000 AU</u>	1,250 feet	1,875 feet	1,875 feet
	<u>1,000 AU to &lt;3,000 AU</u>	1,875 feet	2,500 feet	2,500 feet
	<u>3,000 AU or more</u>	2,375 feet	3,000 feet	3,000 feet
Egg washwater storage structures	<u>500 AU or less</u>	<u>None</u>	<u>None</u>	<u>None</u>
	<u>&gt;500 AU to &lt;1,000 AU</u>	1,000 feet	1,875 feet	1,875 feet
	<u>1,000 AU to &lt;3,000 AU</u>	1,500 feet	2,500 feet	2,500 feet
	<u>3,000 AU or more</u>	2,000 feet	3,000 feet	3,000 feet

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin, and egg washwater storage structure and open feedlot runoff control basin	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure, and confinement building, open feedlot solids settling facility and open feedlot	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR <del>ANIMAL CONFINEMENT</del> FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet*
Wellhead, or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	2,500 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Excluding small feeding operations Exemptions provided in subrule 65.12(2))	100 feet
*200 feet from a water source required for a dry bedded confinement feeding operation structure.	

<sup>1</sup>See rule ~~567 IAC 65.12(455B)~~ 567—65.12(459,459B) for exemptions available from the above distances.

ITEM 38. Adopt the following new Tables 6a to 6d and 7 in ~~567—Chapter 65:~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

TABLE 6a

Required Separation Distances for Confinement Feeding Operations Constructed on or after January 1, 1999, but prior to March 1, 2003—Swine, Sheep, Horses and Poultry

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS <sup>1</sup>				
Type of Structure	Animal Unit (AU) Capacity and Animal Weight Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	500 AU or less	1,250 feet	1,250 feet	1,250 feet
	>500 AU to <625,000 lbs	1,250 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,875 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	2,500 feet	2,500 feet	2,500 feet
Covered earthen manure storage basins	500 AU or less	1,000 feet	1,250 feet	1,250 feet
	>500 AU to <625,000 lbs	1,000 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,250 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,875 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	1,250 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,500 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings and covered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	1,000 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,250 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,875 feet	2,500 feet	2,500 feet
Egg washwater storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	750 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,000 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,500 feet	2,500 feet	2,500 feet

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin and egg washwater storage structure	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure and confinement building	200 feet	100 feet	200 feet	100 feet

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

OTHER DISTANCES FOR CONFINEMENT FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Wellhead or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	2,500 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Exemptions provided in subrule 65.12(2))	100 feet

<sup>1</sup>See rule 567—65.12(459,459B) for exemptions available from the above distances.

TABLE 6b

Required Separation Distances for Confinement Feeding Operations Constructed on or after January 1, 1999, but prior to March 1, 2003—Beef and Dairy Cattle

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS <sup>1</sup>				
Type of Structure	Animal Unit (AU) Capacity and Animal Weight Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	500 AU or less	1,250 feet	1,250 feet	1,250 feet
	>500 AU to <1,600,000 lbs	1,250 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,875 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	2,500 feet	2,500 feet	2,500 feet
Covered earthen manure storage basins	500 AU or less	1,000 feet	1,250 feet	1,250 feet
	>500 AU to <1,600,000 lbs	1,000 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,250 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	1,875 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <1,600,000 lbs	1,250 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,500 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings and covered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <1,600,000 lbs	1,000 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,250 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	1,875 feet	2,500 feet	2,500 feet

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin and egg washwater storage structure	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure and confinement building	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR CONFINEMENT FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Wellhead or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	2,500 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Exemptions provided in subrule 65.12(2))	100 feet

<sup>1</sup>See rule 567—65.12(459,459B) for exemptions available from the above distances.

TABLE 6c

Required Separation Distances for Confinement Feeding Operations Constructed prior to January 1, 1999—Swine, Sheep, Horses and Poultry

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS <sup>1</sup>				
Type of Structure	Animal Unit (AU) Capacity and Animal Weight Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	500 AU or less	1,250 feet	1,250 feet	1,250 feet
	>500 AU to <625,000 lbs	1,250 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,875 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	2,500 feet	2,500 feet	2,500 feet
Covered earthen manure storage basins	500 AU or less	750 feet	1,250 feet	1,250 feet
	>500 AU to <625,000 lbs	750 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,000 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,500 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	1,000 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,500 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	2,000 feet	2,500 feet	2,500 feet

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Confinement buildings and covered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	750 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,000 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,500 feet	2,500 feet	2,500 feet
Egg washwater storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	750 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,000 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,500 feet	2,500 feet	2,500 feet

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin and egg washwater storage structure	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure and confinement building	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR CONFINEMENT FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Wellhead or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	2,500 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Exemptions provided in subrule 65.12(2))	100 feet

<sup>1</sup>See rule 567—65.12(459,459B) for exemptions available from the above distances.

TABLE 6d

Required Separation Distances for Confinement Feeding Operations Constructed prior to January 1, 1999—Beef and Dairy Cattle

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS <sup>1</sup>				
Type of Structure	Animal Unit (AU) Capacity and Animal Weight Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	500 AU or less	1,250 feet	1,250 feet	1,250 feet
	>500 AU to <1,600,000 lbs	1,250 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,875 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	2,500 feet	2,500 feet	2,500 feet

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Covered earthen manure storage basins	500 AU or less	750 feet	1,250 feet	1,250 feet
	>500 AU to <1,600,000 lbs	750 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,000 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	1,500 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <1,600,000 lbs	1,000 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,500 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings and covered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <1,600,000 lbs	750 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,000 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	1,500 feet	2,500 feet	2,500 feet

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin and egg washwater storage structure	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure and confinement building	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR CONFINEMENT FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Wellhead or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	2,500 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Exemptions provided in subrule 65.12(2))	100 feet

<sup>1</sup>See rule 567—65.12(459,459B) for exemptions available from the above distances.

TABLE 7

Required Separation Distances for Open Feedlot Operations, Stockpiles from Open Feedlot Operations, Stockpiles from Dry Manure Confinement Operations and Stockpiles from Dry Bedded Confinement Operations

DISTANCES TO WELLS FOR OPEN FEEDLOT STRUCTURES				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Settled open feedlot effluent basin	1,000 feet	400 feet	400 feet	400 feet
Open feedlot, open feedlot solids settling facility, AT system and feed storage runoff basin	200 feet	100 feet	200 feet	100 feet
DISTANCES TO RESIDENCES AND SPECIAL AREAS FOR MANURE STOCKPILES <sup>1, 2</sup>				
Residence, commercial enterprise, bona fide religious institution, educational institution, or public use area (does not apply to stockpiles from SAFO sized confinements and open feedlots)				1,250 feet
Designated area other than a high-quality water resource				400 feet <sup>3</sup>
High-quality water resource				800 feet
Terrace tile inlet or surface tile inlet – unless methods, structures or practices are implemented to contain the stockpiled manure				200 feet

<sup>1</sup>Manure stockpiles are prohibited on grassed waterways or where water pools on the surface. Manure stockpiles are also prohibited on land with slopes greater than 3% unless methods, structures or practices are implemented to contain the stockpiled manure to prevent or diminish precipitation-induced runoff from the stockpiled manure.

<sup>2</sup>See subparagraph 65.2(3)“d”(4) and paragraph 65.11(8)“c” for exemptions pertaining to dry manure stockpiles.

<sup>3</sup>For stockpiles from dry manure confinement operations, the separation distance is 800 feet to agricultural drainage wells and known sinkholes.

[Filed 7/22/10, effective 9/15/10]

[Published 8/11/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8994B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 7, “Appeals and Hearings,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments revise Medicaid service requirements to allow a contracted broker to provide management and oversight of the provision of nonemergency medical transportation. Section 6083 of the Deficit Reduction Act of 2005 (DRA), Public Law 109-171, allows states to implement a brokerage program to provide nonemergency medical transportation to Medicaid members who need transportation to access medical care. The University of Iowa Public Policy Center published a study in 2008 recommending that Iowa Medicaid move to a single, statewide broker system.

The Department has entered into a contract for a transportation brokerage that will be responsible for arranging transportation for Medicaid members who are eligible for this benefit, negotiating rates with transportation providers, and reimbursing transportation claims. Medicaid members who qualify to receive nonemergency medical transportation will be required to make transportation arrangements

## HUMAN SERVICES DEPARTMENT[441](cont'd)

through the Department's contracted broker. A member who has been denied transportation by the broker will be able to appeal this decision.

The brokerage system will not apply to:

- Medicaid providers that provide nonemergency medical transportation as a directly reimbursable service, such as federally qualified health centers and local education agencies.
- Transportation provided under a Medicaid home- and community-based services waiver.

The amendments also eliminate the requirement that transportation services be available only for medical appointments outside the community in which the member lives, which is a restriction in conflict with federal regulations.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on May 19, 2010, as **ARC 8756B**. The Department received three comments on the Notice of Intended Action, related to the scope and applicability of the brokerage system and whether nursing homes are treated fairly under the rules.

In response to these comments, the Department has made the following change to the amendments as published under Notice of Intended Action: The words "one way or round trip" have been added to subrule 78.13(1) to clarify that transportation home after receipt of medical care will be provided as necessary for the member to receive medical care.

The Council on Human Services adopted these amendments on July 21, 2010.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective on October 1, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **441—7.1(17A)**, definition of "Aggrieved person," as follows:

"*Aggrieved person*" means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. and 2. No change.
3. For medical assistance, healthy and well kids in Iowa, IowaCare, family planning services, and waiver services, a person (see numbered paragraph "7" for providers):
  - Whose request to be given an application was denied.
  - Whose application has been denied or has not been acted on in a timely manner.
  - Who has been notified that level of care requirements have not been met.
  - Who has been aggrieved by a failure to take into account the appellant's choice in assignment to a coverage group.
  - Who contests the effective date of assistance, services, or premium payments.
  - Who contests the amount of health insurance premium payments, healthy and well kids in Iowa premium payments, Medicaid for employed people with disabilities premium payments, IowaCare premium payments, or the spenddown amount under the medically needy program.
  - Who contests the amount of client participation.
  - Whose claim for payment or prior authorization has been denied.
  - Who has been notified that the reconsideration process has been exhausted and who remains dissatisfied with the outcome.
  - Who has received notice from the medical assistance hotline that services not received or services for which an individual is being billed are not payable by medical assistance.
  - Who has been notified that there will be a reduction or cancellation of assistance or waiver services.
  - Who has been notified that an overpayment of benefits has been established and repayment is requested.
  - Who has been denied requested nonemergency medical transportation services by the broker designated by the department pursuant to rule 441—78.13(249A) and has exhausted the grievance procedures established by the broker pursuant to 441—subrule 78.13(7).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

4. to 12. No change.

ITEM 2. Rescind rule 441—78.13(249A) and adopt the following **new** rule in lieu thereof:

**441—78.13(249A) Nonemergency medical transportation.** Nonemergency transportation to receive medical care, including any reimbursement of transportation expenses incurred by a Medicaid member, shall be provided through the broker designated by the department pursuant to a contract between the department and the broker, as specified in this rule.

**78.13(1) Member request.** When a member needs nonemergency transportation, one way or round trip, to receive medical care provided by the Medicaid program, including any reimbursement of transportation expenses incurred by the member, the member must contact the broker in advance. The broker shall establish and publicize the procedures for members to request transportation services. The broker is required to provide transportation within 72 hours of a request only if receipt of medical care within 72 hours is medically necessary.

**78.13(2) Necessary services.** Transportation shall be provided only when the member needs transportation to receive necessary services covered by the Iowa Medicaid program from an enrolled provider, including transportation needed to obtain prescribed drugs.

**78.13(3) Access to free transportation.** Transportation shall be provided only if the member does not have access to transportation that is available at no cost to the member, such as transportation provided by volunteers, relatives, friends, social service agencies, nursing facilities, residential care centers, or any other source. EXCEPTION: If a prescribed drug is needed immediately, transportation will be provided to obtain the drug even if free delivery is available.

**78.13(4) Closest medical provider.** Transportation beyond 20 miles (one way) shall be provided only to the closest qualified provider unless:

a. The difference between the closest qualified provider and the provider requested by the member is less than 10 miles (one way); or

b. The additional cost of transportation to the provider requested by the member is medically justified based on:

- (1) A previous relationship between the member and the requested provider,
- (2) Prior experience of the member with closer providers, or
- (3) Special expertise or experience of the requested provider.

**78.13(5) Coverage.** Based on the information provided by the member and the provisions of this rule, the broker shall arrange and reimburse for the most economical form of transportation appropriate to the needs of the member.

a. The broker may require that public transportation be used when reasonably available and the member's condition does not preclude its use.

b. The broker may arrange and reimburse for transportation by arranging to reimburse the member for transportation expenses. In that case, the member shall submit transportation expenses to the broker on Form 470-0386, Medical Transportation Claim, or an equivalent electronic form.

c. When a member is unable to travel alone due to age or due to physical or mental incapacity, the broker shall provide for the expenses of an attendant.

d. The broker shall provide for meals, lodging, and other incidental transportation expenses required for the member and for any attendant required due to the age or incapacity of the member in connection with transportation provided under this rule.

**78.13(6) Exceptions for nursing facility residents.**

a. Nonemergency medical transportation for residents of nursing facilities within 30 miles of the nursing facility (one way) shall not be provided through the broker but shall be the responsibility of the nursing facility.

b. Nonemergency medical transportation for residents of nursing facilities beyond 30 miles from the nursing facility (one way) shall be provided through the broker, but the nursing facility shall contact the broker on behalf of the resident.

**78.13(7) Grievances.** Pursuant to its contract with the department, the broker shall establish an internal grievance procedure for members and transportation providers. Members who have exhausted

## HUMAN SERVICES DEPARTMENT[441](cont'd)

the grievance process may appeal to the department pursuant to 441—Chapter 7 as an “aggrieved person.” For transportation providers, the grievance process shall end with binding arbitration, with a designee of the Iowa Medicaid enterprise as arbitrator.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 3. Amend paragraphs **81.10(5)“b”** and **“d”** as follows:

*b.* The facility shall arrange for nonemergency transportation for members to receive necessary medical services outside the facility.

(1) If a family member, friend, or volunteer is not available to provide the transportation at no charge, the facility shall arrange and pay for the medically necessary transportation within 30 miles of the facility (one way).

(2) For medically necessary transportation beyond 30 miles from the facility (one way), when no family member, friend, or volunteer is available to provide the transportation at no charge, the facility shall arrange for transportation through the broker designated by the department, with the cost to be paid by the broker pursuant to rule 441—78.13(249A).

*d.* Other supplies or services for which direct Medicaid payment may be available include:

(1) to (4) No change.

(5) Transportation to receive medical services ~~outside the community subject to limitations specified in rule 441—78.13(249A)~~ beyond 30 miles from the facility (one way), through the broker designated by the department pursuant to a contract between the department and the broker.

(6) No change.

[Filed 7/22/10, effective 10/1/10]

[Published 8/11/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8990B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services rescinds Chapter 57, “Interim Assistance Reimbursement,” Iowa Administrative Code, and adopts a new chapter with the same title.

Interim Assistance Reimbursement is a federal program that allows county assistance agencies to recover funds expended for basic needs of food, clothing and shelter for a county resident who has applied for Supplemental Security Income (SSI). The Department has an agreement with the Social Security Administration to allow the state of Iowa to participate in the program. The Department then enters into agreements with the county assistance agencies for their participation.

When a county resident agrees to participate in the program, the Social Security Administration will issue all or part of the resident’s SSI cash benefits for past months directly to the authorized county agency as reimbursement for expenses the county agency paid in each month. Agreement to participate in the program will also protect the resident’s application filing date for SSI if the resident and the county agency follow up within the Social Security Administration’s designated time limits. All case processing is done by the county agency. The resident may appeal to the county agency if the resident disagrees with the amount of funds distributed.

This rule making:

- Adds county commissions of veteran affairs to the definition of “county agency.”
- Removes requirements that are more appropriately reserved for inclusion in the agreement between county agencies and the Department. New agreement language has been issued by the Social Security Administration. The Department will be entering into new agreements with county agencies that will take effect on September 25, 2010. Taking the agreement provisions out of the rules will allow agreements to be modified more easily when changes are needed to administer the program.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Removes a provision for automatic renewal of the agreement between the Department and the county agency. The Department had considered requiring periodic review of the agreement, but has determined that these agreements are not “service contracts” within the meaning of Iowa Code chapter 8F.
- Provides that county agencies shall submit Form 470-1947, Certificate of Authority, directly to the Social Security Administration, with a copy to the Department.

These rules do not provide for waivers in specified situations because participation in this program is limited to agencies that enter into an agreement with the Department. Conditions for participation are dictated by an agreement between the Social Security Administration and the state.

The Council on Human Services adopted these rules on July 21, 2010.

The Department finds that notice and public participation are impracticable because the state’s contract with the Social Security Administration requires that changes in the county agreements be implemented no later than September 25, 2010. Therefore, these rules are filed pursuant to Iowa Code section 17A.4(3).

These rules are also published herein under Notice of Intended Action as **ARC 8991B** to allow for public comment.

These rules are intended to implement Iowa Code chapter 249 and 1984 Iowa Acts, chapter 1310, section 9.

These rules shall become effective on September 15, 2010.

The following amendment is adopted.

Rescind 441—Chapter 57 and adopt the following new chapter in lieu thereof:

CHAPTER 57  
INTERIM ASSISTANCE REIMBURSEMENT

**441—57.1(249) Definitions.**

“*Benefits*” means Supplemental Security Income (SSI) for the aged, blind, and disabled (a federal cash assistance program under Title XVI of the Social Security Act) and any federally administered state supplementary assistance payments that are determined by the Social Security Administration to be due an individual at the time the SSI payment is made.

“*County agency*” means a county or county subdivision under the jurisdiction of the county board of supervisors, including a county commission of veteran affairs, that furnishes relief in the form of cash or vendor payments to or in behalf of needy persons in accordance with established standards under the provisions of Iowa Code chapter 35B or 252.

“*Initial payment*” means the amount of benefits determined by the Social Security Administration to be payable to an eligible person (including any retroactive amounts) when the person is first determined to be eligible for SSI. The initial payment does not include any emergency advance payments, any presumptive disability or blindness payments, or any immediate payments authorized under Section 1631 of the Social Security Act.

“*Initial posteligibility payment*” means the amount of benefits determined by the Social Security Administration to be payable to an eligible person (including any retroactive amounts) when the person is first determined eligible for SSI following a period of suspension or termination. The initial posteligibility payment does not include any emergency advance payments, any presumptive disability or blindness payments, or any immediate payments authorized under Section 1631 of the Social Security Act.

“*Interim assistance*” means assistance in the form of cash or vendor payments for meeting basic needs furnished by a county agency during the interim period. “Basic needs” include food, clothing, shelter, medical care and services not covered by Medicaid, and other essentials of daily living. Interim assistance does not include the county payment of social services costs associated with services during the interim period or medical care or services covered by Medicaid.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Interim period*” means either (1) the period beginning with the month following the month in which a person filed an application for benefits for which the person was found to be eligible and ending with and including the month the person’s benefits began, or (2) the period beginning the day the person’s benefits were reinstated after a period of suspension or termination, and ending with (and including) the month the person’s benefits were resumed. The interim period does not include any periods during which the person is underpaid by the Social Security Administration due to that agency’s failure to make a timely modification of the person’s SSI benefit or for any other reason.

**441—57.2(249) Requirements for reimbursement.** In order to receive reimbursement for interim assistance payments, a county agency must meet the following requirements.

**57.2(1) Agreement.** The county agency shall enter into a written agreement with the department of human services on Form 470-1948, Interim Assistance Reimbursement Agreement.

**57.2(2) Authorization.** The county agency shall secure written authorization from the person seeking interim assistance. By signing Form 470-1950, Authorization for Reimbursement of Interim Assistance, the person:

- a. Indicates the intent to apply for SSI benefits.
- b. Authorizes the Social Security Administration to:
  - (1) Withhold the amount of interim assistance from the person’s initial payment or initial posteligibility payment, and
  - (2) Make this amount payable to the county agency.

**57.2(3) Records.** The county agency shall:

- a. Maintain a file for each person who has received interim assistance.
- b. Maintain adequate records of all transactions made relating to interim assistance.
- c. Comply with the provisions of the Federal Information Security Management Act (FISMA); 20 CFR Part 401 as amended to April 1, 2009; and the Privacy Act of 1974 relating to the safeguarding of information concerning individuals who have applied for interim assistance.

**441—57.3(249) Certificate of authority.**

**57.3(1)** The county agency shall submit the information requested on the Certificate of Authority, Form 470-1947, to the Social Security Administration at the address given on the form:

- a. Before the date the agency first participates in the program, and
- b. Subsequently when changes in the list of authorized officials occur.

**57.3(2)** The county agency shall submit a copy of Form 470-1947 to the department of human services at the address given on the form each time the form is submitted to the Social Security Administration.

These rules are intended to implement 1984 Iowa Acts, chapter 1310, section 9.

[Filed Without Notice 7/21/10, effective 9/15/10]

[Published 8/11/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8992B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6(4), the Department of Human Services amends Chapter 65, “Food Assistance Program Administration,” Iowa Administrative Code.

These amendments change the methodology for determining the annual changes to the standard utility allowance amounts that are given as income deductions in the Food Assistance Program. The United States Department of Agriculture Food and Nutrition Service (FNS) allows states to adjust these amounts annually based on a methodology approved by FNS. When the Department submitted its request for the

## HUMAN SERVICES DEPARTMENT[441](cont'd)

October 1, 2009, adjustment, FNS approved the change but informed the Department that the current methodology would not be accepted for future years. The Department must develop a methodology that will meet federal approval.

These amendments do not provide for waivers in specified situations because the allowances must be approved by FNS and the Department has no authority to waive them. Food Assistance benefits are entirely federally funded.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on May 19, 2010, as **ARC 8758B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on July 21, 2010.

These amendments are intended to implement Iowa Code section 234.12.

These amendments shall become effective on October 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [65.8] is being omitted. These amendments are identical to those published under Notice as **ARC 8758B**, IAB 5/19/10.

[Filed 7/22/10, effective 10/1/10]

[Published 8/11/10]

[For replacement pages for IAC, see IAC Supplement 8/11/10.]

**ARC 8993B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments:

- Clarify criteria for coverage of oxygen in nursing facilities. Significant hypoxemia as defined by Medicare is required for coverage both for members living in their own homes and for members living in a nursing facility or an intermediate care facility for persons with mental retardation.
- Establish criteria for coverage of oxygen for infants and small children, whose oxygen needs are different from those of older people. Home oxygen equipment and oxygen may be covered for members through three years of age without regard to the member's hypoxemia level.
- Delete outdated documentation requirements for oxygen claims. With this change, providers will be able to bill oxygen claims electronically without the need for a document attachment.
- Clarify that nutritional products consumed orally are not separately payable for members in nursing facilities or intermediate care facilities for persons with mental retardation.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on May 5, 2010, as **ARC 8722B**. The Department received no comments on the Notice of Intended Action. The Department has made the following changes to the amendments as published under Notice of Intended Action:

- In paragraph 78.10(2)"a," moved the words "has significant hypoxemia as defined by Medicare and evidenced by supporting medical documentation" and "for at least 30 days" from the introductory paragraph to subparagraph (1); added the phrase "or an intermediate care facility for persons with mental retardation" to the introductory paragraph as a potential site for the exception; and moved the sentence "Oxygen prescribed 'PRN' or 'as necessary' is not allowed" from an unnumbered paragraph to the introductory paragraph of subparagraph (1).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

• In paragraph 78.10(2)“c,” introductory paragraph, added “defined by Medicare” to the reference to hypoxemia, added the word “supporting” to the reference to medical documentation, and added the condition that other forms of treatment may be contraindicated as a qualifier for the exception.

The Council on Human Services adopted these amendments on July 21, 2010.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective on October 1, 2010.

The following amendments are adopted.

ITEM 1. Amend paragraph **78.10(2)“a”** as follows:

a. Durable medical equipment will not be provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded except when a Medicaid-eligible resident of a nursing facility medically needs oxygen for 12 or more hours per day for at least 30 days or more persons with mental retardation. EXCEPTION: Medicaid will provide payment to medical equipment and supply dealers to provide oxygen services in a nursing facility or an intermediate care facility for persons with mental retardation when all of the following requirements and conditions have been met:

(1) A physician’s, physician assistant’s, or advanced registered nurse practitioner’s prescription documents that a resident of a nursing facility the member has significant hypoxemia as defined by Medicare and evidenced by supporting medical documentation and the member requires oxygen for 12 hours or more per day and the provider and physician, physician assistant, or advanced registered nurse practitioner jointly submit Certificate of Medical Necessity, Form CMS-484, from Medicare or a reasonable facsimile to the Iowa Medicaid enterprise with the monthly billing for at least 30 days. Oxygen prescribed “PRN” or “as necessary” is not allowed. The documentation submitted maintained in the provider record must contain the following:

1. to 5. No change.

Oxygen prescribed “PRN” or “as necessary” is not allowed.

(2) to (6) No change.

ITEM 2. Amend paragraph **78.10(2)“c,”** introductory paragraph, as follows:

c. Coverage of home oxygen equipment and oxygen will be considered reasonable and necessary only for members with significant hypoxemia; as defined by Medicare and shown by supporting medical documentation. The physician’s, physician assistant’s, or advanced registered nurse practitioner’s prescription shall document that other forms of treatment are contraindicated or have been tried and have not been successful; and that oxygen therapy is required. EXCEPTION: Home oxygen equipment and oxygen are covered for children through three years of age when prescribed by a physician, physician assistant or advanced registered nurse practitioner. A pulse oximeter reading must be obtained at one year of age and at two years of age and documented in the provider record.

ITEM 3. Amend paragraph **78.10(3)“b”** as follows:

b. Only the following types of prosthetic devices shall be covered through the Medicaid program:

(1) Artificial eyes.

(2) Artificial limbs.

(3) Augmentative communications systems provided for members unable to communicate their basic needs through oral speech or manual sign language. Payment will be made for the most cost-effective item that meets basic communication needs commensurate with the member’s cognitive and language abilities. See 78.10(3)“c” for prior approval requirements.

(4) Enteral delivery supplies and products. See 78.10(3)“c” for prior approval requirements.

(5) Hearing aids. See rule 441—78.14(249A).

(6) Oral nutritional products. See 78.10(3)“c” for prior approval requirements. Nutritional products consumed orally are not covered for members in nursing facilities or intermediate care facilities for the mentally retarded.

(7) Orthotic devices. See 78.10(3)“d” for limitations on coverage of cranial orthotic devices.

(8) Ostomy appliances.

(9) Parenteral delivery supplies and products. Daily parenteral nutrition therapy is considered necessary and reasonable for a member with severe pathology of the alimentary tract that does not

## HUMAN SERVICES DEPARTMENT[441](cont'd)

allow absorption of sufficient nutrients to maintain weight and strength commensurate with the member's general condition.

(10) Prosthetic shoes. See rule 441—78.15(249A).

(11) Tracheotomy tubes.

(12) Vibrotactile aids. Vibrotactile aids are payable only once in a four-year period unless the original aid is broken beyond repair or lost. (Cross-reference ~~78.28(8)~~ 78.28(4))

ITEM 4. Amend subparagraph **78.10(3)“c”(3)** as follows:

(3) Oral nutritional products. Payment for oral nutritional products shall be approved as medically necessary only when the member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition. Nutritional products consumed orally are not covered for members in nursing facilities or intermediate care facilities for the mentally retarded. A request for prior approval shall include a physician's, physician assistant's, or advanced registered nurse practitioner's written order or prescription and documentation to establish the medical necessity for oral supplementation pursuant to these standards. The documentation shall include:

1. A statement of the member's total medical condition that includes a description of the member's metabolic, digestive, or psychological disorder or pathology.

2. Documentation of the medical necessity for commercially prepared products. The information submitted must identify other methods attempted to support the member's nutritional status and indicate that the member's nutritional needs were not or could not be met by regular food in pureed form.

3. Documentation to support the fact that regular foods will not provide sufficient nutritional value to the member. Examples of conditions that will not justify approval of oral supplementation are: weight-loss diets, wired-shut jaws, diabetic diets, milk or food allergies (unless the member is under five years of age and coverage through the Women, Infant and Children's program is not available), supplementation to boost calorie or protein intake by less than 51 percent of the daily intake, and the absence of severe pathology of the body or psychological pathology or disorder.

[Filed 7/22/10, effective 10/1/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8995B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

Medicaid reimbursement rates for nursing facilities were reduced in December 2009 as a result of Executive Order 19. These amendments modify those reductions as follows:

- The minimum occupancy rate that is used in calculating facility per diem cost, pay-for-performance reimbursement, and the capital cost per diem instant relief add-on and enhanced non-direct care rate component limit is reinstated to 85 percent effective December 1, 2009.

- The payment for periods when a resident is absent from the facility is modified, eliminating payments for reserve bed days due to visit or hospitalization. The exception is special population facilities, which will be paid at 42 percent of their per diem for the allowable number of days of absence, regardless of the occupancy rate.

- The pay-for-performance program is suspended for state fiscal year 2010 and will continue to be suspended unless funding is appropriated.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations because these payment provisions were set by legislative action. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on July 21, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments merely conform the rules to legislative directives in 2010 Iowa Acts, Senate File 2366.

These amendments are intended to implement Iowa Code section 249A.4, Iowa Code chapter 249K, 2009 Iowa Code Supplement chapter 249L, and 2010 Iowa Acts, Senate File 2366, division VII.

These amendments shall become effective on September 15, 2010.

The following amendments are adopted.

ITEM 1. Amend subparagraph **81.6(16)“a”(1)** as follows:

(1) Non-state-owned nursing facilities. ~~Patient~~ Effective December 1, 2009, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state-owned facilities shall be inpatient days as determined in subrule 81.6(7) or ~~90~~ 85 percent of the licensed capacity of the facility, whichever is greater. Patient days for purposes of the computation of all other expenses shall be inpatient days as determined in subrule 81.6(7).

ITEM 2. Amend paragraph **81.6(16)“g,”** introductory paragraph, as follows:

g. Pay-for-performance program. ~~Additional~~ Effective July 1, 2010, additional reimbursement based on the nursing facility pay-for-performance program is available for non-state-owned facilities ~~effective July 1, 2009, as provided in this paragraph in state fiscal years for which funding is appropriated by the legislature.~~ The pay-for-performance program provides additional reimbursement based upon a nursing facility's achievement of multiple favorable outcomes as determined by established benchmarks. The reimbursement is issued as an add-on payment after the end of ~~the~~ any state fiscal year (which is referred to in this paragraph as the “payment period”) for which there is funding appropriated by the legislature.

ITEM 3. Amend subparagraph **81.6(16)“g”(10)**, introductory paragraph, as follows:

(10) Calculation of potential add-on payment. The number of points awarded shall be determined annually, for each state fiscal year for which funding is appropriated by the legislature. A determination is made on whether a facility qualifies for an add-on payment at the end of the payment period. Based upon the number of points awarded, a retroactive add-on payment is made effective beginning the first day of the payment period as follows, contingent upon legislative funding for the state fiscal year, and subject to subparagraph (11):

ITEM 4. Amend subparagraph **81.6(16)“h”(9)** as follows:

(9) Calculation of capital cost per diem instant relief add-on. The capital cost per diem instant relief add-on is calculated by dividing the annual estimated property costs for the complete replacement, new construction, or major renovation project for which the add-on is granted by the facility's estimated annual total patient days.

1. ~~Total~~ Effective December 1, 2009, total patient days shall be determined using the most current submitted financial and statistical report or using the estimated total patient days as reported in the request for the add-on. For purposes of calculating the add-on, total patient days shall be the greater of the estimated annual total patient days or ~~90~~ 85 percent of the facility's estimated licensed capacity.

2. and 3. No change.

ITEM 5. Amend subparagraph **81.6(16)“h”(12)** as follows:

(12) Reconciliation of capital cost per diem instant relief add-on. During the period in which the capital cost per diem instant relief add-on is granted, the Iowa Medicaid enterprise shall recalculate the amount of the add-on based on actual allowable costs and patient days reported on the facility's submitted annual financial and statistical report. A separate reconciliation shall be performed for each cost report period in which the capital cost per diem instant relief add-on was paid. The facility shall submit with

## HUMAN SERVICES DEPARTMENT[441](cont'd)

the annual financial and statistical report a separate schedule reporting total patient days per calendar quarter and a current depreciation schedule identifying the assets related to the add-on.

1. ~~For~~ Effective December 1, 2009, for purposes of recalculating the capital cost per diem instant relief add-on, total patient days shall be based on the greater of the number of actual patient days during the period in which the add-on was paid or ~~90~~ 85 percent of the facility's actual licensed bed capacity during the period in which the add-on was paid.

2. No change.

ITEM 6. Amend rule ~~441—81.6(249A)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~249A.2(7), 249A.3(2)“e,” 249A.4, and 249A.16, Iowa Code chapter 249K, and 2009 Iowa Acts, Senate File 476 2009 Iowa Code Supplement chapter 249L.~~

ITEM 7. Amend paragraph ~~81.10(4)“f”~~ as follows:

~~f. Payment~~ Effective December 1, 2009, payment for periods when residents are absent for a visit, vacation, or hospitalization shall be made at ~~42~~ zero percent of the nursing facility's rate, except for special population facilities, which shall be paid for such periods at 42 percent of the facility's rate. ~~Payment for periods when residents are absent for hospitalization shall:~~

(1) ~~Be made at 25 percent of the nursing facility's rate if the facility occupancy percentage is 95 percent or greater.~~

(2) ~~Not be made if a facility's occupancy percentage is less than 95 percent.~~

(3) ~~Be made at 42 percent of the nursing facility's rate for special population facilities.~~

ITEM 8. Amend subparagraph ~~81.10(5)“e”(1)~~ as follows:

(1) The resident, the resident's family, or friends may pay to hold the resident's bed in cases where a resident who is not discharged from the facility ~~spends over 18 days per year on visits (or longer under 81.10(4)“d”) or spends over 10 days per calendar month on a hospital stay~~ is absent overnight. ~~These supplementation payments shall not exceed the amount the department would pay to hold the bed under paragraph 81.10(4)“f.”~~ When the resident is discharged, the facility may handle the holding of the bed in the same manner as for a private paying resident.

ITEM 9. Adopt the following **new** implementation sentence in rule ~~441—81.10(249A)~~:

This rule is intended to implement Iowa Code section 249A.4.

ITEM 10. Amend subrule 81.20(3) as follows:

~~81.20(3) Payment~~ Effective December 1, 2009, payment for periods when residents are absent for visitation or hospitalization will be made to out-of-state facilities at ~~75~~ zero percent of the rate paid to the facility by the Iowa Medicaid program.

[Filed Without Notice 7/22/10, effective 9/15/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8997B**

**LABOR SERVICES DIVISION[875]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner amends Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The amendments adopt by reference changes to federal occupational safety and health standards pertaining to hexavalent chromium and steel erection. These amendments require that employers in general industry and construction notify employees of hexavalent chromium exposure determinations regardless of whether the permissible exposure limit was exceeded. These amendments also add a note

## LABOR SERVICES DIVISION[875](cont'd)

to the occupational safety and health standards for construction that notifies the public of a requirement enforced by the Federal Highway Administration (FHWA). The U.S. Department of Labor added the note to the occupational safety and health standards for construction because the FHWA requirement enhances the integrity of structural steel, thus improving employee safety.

The principal reasons for adoption of these amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa's regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1)"a" and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

Notice of Intended Action was published in the June 16, 2010, Iowa Administrative Bulletin as **ARC 8862B**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

No variance provisions are included in these rules. Variance procedures are set forth in 875—Chapter 5.

These amendments are intended to implement Iowa Code section 88.5.

These amendments shall become effective on September 15, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:  
75 Fed. Reg. 12685 (March 17, 2010)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:  
75 Fed. Reg. 12685 (March 17, 2010)  
75 Fed. Reg. 27429 (May 17, 2010)

[Filed 7/22/10, effective 9/15/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8984B**

## **LABOR SERVICES DIVISION[875]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 91C.6, the Labor Commissioner amends Chapter 150, "Construction Contractor Registration," Iowa Administrative Code.

These amendments update rules to reflect legislation in 2010 Iowa Acts, House File 2522, sections 26 to 28, that changed the bonding requirements for out-of-state construction contractors. These amendments rescind provisions that contradict House File 2522 and adopt new provisions that are consistent with House File 2522.

Notice of Intended Action was published in the June 2, 2010, Iowa Administrative Bulletin as **ARC 8818B**. No public comment was received on the proposed amendments. The amendments were also Adopted and Filed Emergency and were published in the June 2, 2010, Iowa Administrative Bulletin as **ARC 8812B**.

One of the adopted amendments differs from that proposed under Notice. The adopted amendment requires that, in order for an out-of-state contractor to be exempt from the bond requirement, the contractor must submit a copy of a letter from the Iowa Department of Transportation stating that the contractor is prequalified to bid pursuant to Iowa Code section 314.1.

The principal reasons for adoption of these amendments are to implement legislative intent and enhance collection of debts owed to the state of Iowa. No variance procedures are included in these rules because variance provisions are set forth in 875—Chapter 1.

These amendments are intended to implement Iowa Code chapter 91C as amended by 2010 Iowa Acts, House File 2522, sections 26 to 28.

## LABOR SERVICES DIVISION[875](cont'd)

These amendments shall become effective on September 15, 2010, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Rescind the definition of "Contract price" in rule **875—150.2(91C)**.

ITEM 2. Amend rule 875—150.4(91C), introductory paragraph, as follows:

**875—150.4(91C) Application.** Each contractor shall file an application with the division for a registration number on forms provided by the division. The application shall contain the applicable information and documents specified in this rule.

ITEM 3. Adopt the following **new** subrule 150.4(11):

**150.4(11) Out-of-state contractor bond.** An out-of-state contractor shall:

*a.* File a surety bond in the amount of \$25,000 for a one-year period that is prepared using the bond form provided by the division, or

*b.* Provide a copy of a letter from the Iowa department of transportation stating that the contractor is prequalified to bid on projects for the department of transportation pursuant to Iowa Code section 314.1.

ITEM 4. Rescind and reserve rules **875—150.13(91C)** to **875—150.15(91C)**.

ITEM 5. Amend **875—Chapter 150**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 91C as amended by ~~2006 Iowa Acts, chapter 1176~~ 2010 Iowa Acts, House File 2522.

[Filed 7/14/10, effective 9/15/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 9004B**

**NATURAL RESOURCE COMMISSION[571]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 15, "General License Regulations," Iowa Administrative Code.

These adopted changes clarify what additional information may be sought by the Department to determine residency status of license applicants and license holders and provide a process for suspension and revocation of licenses not properly obtained.

Notice of Intended Action was published in the May 5, 2010, Iowa Administrative Bulletin as **ARC 8729B**. A public hearing was held on May 25, 2010, and two comments were received. The first comment suggested implementing a three-prong residency test in which a person could prove residency by both having a state driver's license and a state-registered vehicle and by filing state income taxes. The Department believes this test too closely mirrors the previous standards, which resulted in fraud. It is for this reason, combined with related inequity and loss of revenue, that the Department proposed to amend these rules under Notice of Intended Action to add more specific criteria. In short, the Department has determined that the new standards will ensure that those claiming to be Iowa residents, and those receiving the privileges thereof, are true residents.

The second comment sought clarification on who would be required to submit the additional documents and expressed concern that the process was burdensome to applicants and the Department alike. The Department intends to seek additional information from individuals only when there are reasonable grounds for questioning their residency. The Department has a long-standing process for performing such inquiries under the existing rules and is more than prepared to continue this practice under the new standards adopted herein. The second commenter also wanted to ensure that a license

## NATURAL RESOURCE COMMISSION[571](cont'd)

applicant or license holder could challenge the Department's finding. However, Iowa Administrative Code 571—Chapter 7 already provides appeal rights to affected persons. Finally, the second commenter wanted to know how the Department would make the residency determination. The Department shall review all submitted documents and, weighing the totality of the evidence submitted by the person, shall make a residency determination.

Several changes have been made to the amendments published under Notice, primarily to align the rule language with Iowa Code section 483A.1A. In that regard, the definition of "Nonresident" and the introductory paragraph of the definition of "Principal and primary residence or domicile" have been modified and the definition of "Resident" has been expanded, a change modeled directly on the Iowa Code language. Finally, language in rule 571—15.10(483A) pertaining to notice of residency determination has been clarified, and a cross-reference in subrule 15.11(2) has been corrected.

These amendments are intended to implement Iowa Code chapter 483A.

These amendments shall become effective September 15, 2010.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **571—15.2(483A)**:

*"Immediate family member"* means the spouse, a domestic partner, and all minor children of the licensee or person seeking a license.

*"Nonresident"* means a person who is not a resident as that term is defined in this rule.

*"Principal and primary residence or domicile"* means the one and only place where a person has a true, fixed, and permanent home, and to where, whenever the person is briefly and temporarily absent, the person intends to return. Relevant factors used to determine a person's principal and primary residence or domicile include the following:

1. Proof of place of employment, which must include the address of the person's place of employment or business, including the area or region where a majority of the person's work is performed.

2. Physical address, which shall be the person's 911 address(es) or the address of an immediate family member. A post office box or a forwarded address shall not be accepted by the department to verify the person's principal and primary residence or domicile.

3. Utility records, which must include the person's name and be associated with the physical address provided for as the person's principal and primary residence or domicile. The types of records that may be submitted include rental and lease documents and telephone, cellular phone, electricity, water, sewer, cable or satellite television, and any other utility records.

4. Real estate records, which include legal documents showing ownership or leasehold interests of any and all real estate related to the physical address used by the department to verify the person's principal and primary residence or domicile. These records should also provide the time period of such ownership or rental.

5. Vehicle registration(s) for any vehicles owned or leased by the person and immediate family members.

6. Portion of federal, state or local income tax returns filed during the relevant time period showing the address provided on those forms by the person.

7. Documentation of homestead tax exemption allowed to the person or immediate family member(s) for all states in which such exemption is allowed.

8. Documentation of any coinhabitants, other than the person's immediate family members, who use the same principal and primary residence or domicile.

*"Resident"* means a natural person who meets any of the following criteria during each year in which the person claims status as a resident:

1. Has physically resided in this state at the person's principal and primary residence or domicile for a period of not less than 90 consecutive days immediately before applying for or purchasing a resident license, tag, or permit under this chapter and has been issued an Iowa driver's license or an Iowa nonoperator's identification card. A person is not considered a resident under this rule if the

## NATURAL RESOURCE COMMISSION[571](cont'd)

person is residing in the state only for a special or temporary purpose including but not limited to engaging in hunting, fishing, or trapping.

2. Is a full-time student at either of the following:

- An accredited educational institution located in this state if the person resides in this state while attending the educational institution.

- An accredited educational institution located outside of this state, if the person is under the age of 25 and normally resides with at least one parent or legal guardian who maintains a principal and primary residence or domicile in this state.

3. Is a student who qualifies as a resident pursuant to paragraph "2," second bulleted paragraph, only for the purpose of purchasing any resident license specified in Iowa Code section 483A.1 or 484A.2.

4. Is a resident under 18 years of age whose parent is a resident of this state.

5. Is a member of the armed forces of the United States who is serving on active duty, claims residency in this state, and has filed a state individual income tax return as a resident pursuant to Iowa Code chapter 422, division II, for the preceding tax year, or is stationed in this state.

ITEM 2. Adopt the following new rules 571—15.9(483A) to 571—15.11(483A):

**571—15.9(483A) Proof of residency required.** The department shall have the authority to require persons applying for or who have received resident licenses to provide additional information to determine the person's principal and primary residence or domicile and residency status. Whether a person was issued resident or nonresident licenses by the department in previous years shall not be a determining factor of residency. Persons required to provide additional information under this rule shall be notified in writing by the department and shall have 60 days to submit all required information to the department.

**571—15.10(483A) Residency status determination.** Upon receipt of information requested from the person, the department may determine whether the person is a resident or a nonresident for purposes of these rules and Iowa Code chapter 483A. The department shall provide the person with written notice of the finding.

**571—15.11(483A) Suspension or revocation of licenses when nonresidents obtain resident licenses.**

**15.11(1) Suspension or revocation of license.** If the department finds that a nonresident has obtained a resident license, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7. If the department finds that a nonresident has obtained a resident license fraudulently or through intentional misrepresentation, the person shall be guilty of a simple misdemeanor, punishable as a scheduled violation under Iowa Code section 805.8B.

**15.11(2) Dates of suspension or revocation.** The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in rule 571—15.10(483A) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

**15.11(3) Magistrate authority.** Nothing in this chapter shall limit the magistrate's authority as described in Iowa Code section 483A.21 to suspend or revoke licenses.

[Filed 7/23/10, effective 9/15/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 9005B****NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 15, "General License Regulations," Iowa Administrative Code.

The amendments extend the mechanism through which the Department may suspend, revoke or deny issuance or renewal of licenses of persons who owe the state money through the Iowa College Student Aid Commission in conformance with Iowa Code section 261.126.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 2, 2010, as **ARC 8813B**. Public comments were received through June 24, 2010. No comments were received. There have been no changes to the Notice of Intended Action.

These amendments are intended to implement Iowa Code section 261.126.

These amendments shall become effective September 15, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **571—15.52(272D)**, definition of "Unit," as follows:

"Unit" means the centralized collection unit of the department of revenue or the college student aid commission.

ITEM 2. Amend subrule 15.53(3), introductory paragraph, as follows:

**15.53(3) Notice of intent.** The department shall provide a notice of intent to a person of its intent to suspend, revoke or deny issuance or renewal of a license in accordance with Iowa Code chapter 272D of the Iowa Code or section 261.126, whichever is appropriate. The suspension, revocation, or denial shall be effective no sooner than 30 days following the issuance of the notice of intent to the person. The notice shall include all of the following:

ITEM 3. Amend rule 571—15.54(272D) as follows:

**571—15.54(272D) No administrative appeal of the department's action.** Pursuant to Iowa Code ~~section~~ sections 261.126 and 272D.8, a person does not have a right to a hearing before the department to contest the department's action under this rule, but may request a court hearing pursuant to rule 571—15.55(272D).

ITEM 4. Amend **571—Chapter 15**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 272D, 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B and Iowa Code section 261.126.

[Filed 7/23/10, effective 9/15/10]

[Published 8/11/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/10.

**ARC 8981B****PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135K.4, the Department of Public Health hereby amends Chapter 26, "Backflow Prevention Assembly Tester Registration," Iowa Administrative Code.

These amendments update references; add a periodic review of training courses and third-party certification programs; add additional grounds for denial of registration and discipline of a registered tester, including criminal history and discipline in another jurisdiction; add additional grounds for denial or revocation of approval for a training course; and raise registration fees and fees for trainers.

Following is a summary of the major changes from the existing chapter:

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

The registration fee is increased from \$60 to \$72 for a biennial registration. The registration renewal period is changed from August-September to July-September in odd-numbered years. The training course review fee is raised from \$100 to \$200. A notification fee for courses to be held is increased from \$25 to \$50.

Training organizations are required to resubmit course information every five years. Third-party certification organizations are required to resubmit program information every five years.

Additional grounds for denial of registration and discipline are added, including fraud in obtaining registration, criminal history, and discipline in another jurisdiction. Additional grounds for denial or revocation of approval for a training course are added, including submission of false information, falsification of training records, and physical or sexual abuse or harassment of a student or instructor.

Notice of Intended Action was published in the May 19, 2010, Iowa Administrative Bulletin as **ARC 8761B**. No comments were received. The adopted amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on July 14, 2010.

These amendments will become effective on September 15, 2010.

These amendments are intended to implement Iowa Code chapter 135K.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [26.2, 26.4, 26.5, 26.8] is being omitted. These amendments are identical to those published under Notice as **ARC 8761B**, IAB 5/19/10.

[Filed 7/14/10, effective 9/15/10]

[Published 8/11/10]

[For replacement pages for IAC, see IAC Supplement 8/11/10.]

**ARC 8982B****PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby amends Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials," Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials," Chapter 40, "Standards for Protection Against Radiation," Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," and Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations," Iowa Administrative Code.

Items 1, 9, 21, 32, and 62 amend rules to reflect current federal regulations. Items 5 and 6 add electronic brachytherapy devices to subrule 38.8(1). Item 7 adds the radioactive material fee schedule to rule 641—38.8(136C) and includes a general license registration fee. Item 8 clarifies payment requirements to obtain permits for radioactive material shipments. Item 10 resolves comment #1 in Nuclear Regulatory Commission (NRC) letter to the Department dated 9/16/2009. Item 31 corrects the location of values for Sulfur-35. Item 33 clarifies the requirement for assay of doses. Item 63 ensures proper training is completed prior to the examination. The remaining items amend the rules to meet NRC compatibility requirements.

Notice of Intended Action was published in the May 19, 2010, Iowa Administrative Bulletin as **ARC 8762B**. Comments were received from one individual. Most of the changes suggested cannot be made because the changes would not be compatible with federal requirements. However, subparagraph 41.2(34)"b"(2) in Item 36 has been changed as a result of the comments. Subparagraph 41.2(34)"b"(2) now reads as follows:

"(2) Rubidium-82 radiopharmaceuticals from strontium-82/rubidium-82 generators shall measure the strontium-82 and strontium-85 concentration before the first patient use of the day."

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These amendments were adopted by the State Board of Health on July 14, 2010.  
 These amendments will become effective on September 15, 2010.  
 These amendments are intended to implement Iowa Code chapter 136C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 38 to 41, 45] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8762B**, IAB 5/19/10.

[Filed 7/14/10, effective 9/15/10]

[Published 8/11/10]

[For replacement pages for IAC, see IAC Supplement 8/11/10.]

## ARC 8983B

### PUBLIC HEALTH DEPARTMENT[641]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 135M.4, the Department of Public Health hereby amends Chapter 109, "Prescription Drug Donation Repository Program," Iowa Administrative Code.

The rules in Chapter 109 describe the requirements for medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies and the eligibility criteria for individuals to receive donated prescription drugs and supplies. The rule in Item 2 allows the Department of Public Health to be a local repository for the Prescription Drug Donation Repository Program in disaster and emergency situations.

Notice of Intended Action was published in the May 19, 2010, Iowa Administrative Bulletin as **ARC 8765B**. No comments were received. The adopted amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on July 14, 2010.

These amendments will become effective on September 15, 2010.

This rule is intended to implement Iowa Code chapter 135M.

The following amendments are adopted.

ITEM 1. Reserve rules **641—109.12** and **641—109.13**.

ITEM 2. Adopt the following **new** rule 641—109.14(135M):

**641—109.14(135M) Prescription drug donation repository in disaster emergencies.** The following are the requirements for the department to receive and distribute prescription drugs and supplies in preparation for a disaster emergency proclaimed by the governor or in preparation for a public health disaster.

**109.14(1)** The department may receive prescription drugs and supplies directly from the prescription drug donation repository contractor and dispense prescription drugs and supplies through licensed personnel during or in preparation for a disaster emergency proclaimed by the governor pursuant to Iowa Code section 29C.6 or during or in preparation for a public health disaster as defined in 2009 Iowa Code Supplement section 135.140, subsection 6.

**109.14(2)** The department may receive and distribute prescription drugs and supplies as defined in Iowa Code section 135.142 to any Iowan who has been a victim of a disaster emergency proclaimed by the governor.

[Filed 7/14/10, effective 9/15/10]

[Published 8/11/10]

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